

before offering the company a price for the works or stock of the company, etc., etc. No provision was made for the case of a gas company.

This was amended by 62 Vict. (2) ch. 26, sec. 35, giving power to cities, towns, and villages to construct gas, electric light, or water works, and introducing the provision, "in case there is any gas, electric light or water company incorporated for or in the municipality," to be found in the present Act. The amendments of 63 Vict. ch. 33, sec. 29, and 2 Edw. VII. ch. 29, sec. 20, I pass over as immaterial on the present inquiry.

The defendants contend that they have the power under the statute, upon an arbitration being had and the price paid or secured, to take the works and property of the company, or some of it: sec. 566, sub-secs. 4, (a4).

It is argued for the plaintiffs that they are not "a gas, electric light, or water company incorporated for or in the municipality." I do not proceed upon that ground, but upon the general ground that nowhere is there given to the municipality a right of expropriation.

From personal knowledge, I am able to say that the intention, of some at least of those who were interested in the passing of the Act of 1899, was solely to protect the companies already in operation. It was thought unjust for a municipality to start opposition with a private enterprise without giving the owners of the enterprise an opportunity of "getting from under"—it was not intended to give the municipalities a power they had not theretofore had of taking away the business directly from its owners.

Of course we must determine the meaning of the legislation not by what we may know or surmise of the meaning and intention of the legislators, or some of them, but by the meaning of the language which is employed.

It is trite law that a man's property is not to be taken from him except by legislation of the clearest character. Here there is no legislation at all indicating that the property can be taken in invitum. What is provided for is, that no rate shall be struck or works constructed by the municipality until the company has had a chance of getting out with 10 per cent. over and above the value of their works and property as they stand: sec. 566, sub-secs. 4, (a2), (a3).

The only penalty upon the company is, that the municipality may go on and run a competing business—if the shareholders are ratepayers, they will know that their own money is being used to build up a business competitor.