

and are entitled to such right and privilege (if any) over the said excepted portions of Queen street and Yonge street as the Corporation of the City of Toronto had at the time of the execution of the said agreement power to grant for a surface street railway."

Their Lordships think that in an Act of this description a provision of the nature mentioned is to be regarded rather by way of explanation and identification of the agreement which has been confirmed, than by way of creation of actual and independent rights. But, even if they were to be otherwise regarded, in their Lordships' opinion the statute merely expresses in clumsy and obscure language exactly the same conditions as those expressed in the original agreement. The right and privilege, if any, over the excepted portion of Queen street, which the Corporation of the City of Toronto, at the time of execution of the agreement, had power to grant, were the rights and privileges which were to commence when the existing franchise ended. It is quite true that, if that franchise ran its full length, apart from the Act of Parliament, there would have been no right or privilege which the corporation could grant at all. But the statute must be read in light of the fact that the agreement was thereby validated, and the right and privilege which the corporation had power to grant at the date of the agreement must be construed as meaning the right and privilege which the corporation had power to grant, assuming—for this was the whole basis of the agreement—that the agreement itself was legalised. The appellants urge strongly that this gave no effect to the words "if any," and that due effect can only be given to these by making the assumption that, in certain circumstances, no such rights or privileges could be enjoyed by the corporation; and this assumption can, they urge, only be satisfied by regarding the grant as one to take effect if the existing grants were void; but, if assumptions are to be made for which there is no warrant in the facts, it would be just as reasonable to assume that the period of the existing grant might cover, or be extended so as to cover, the whole period of thirty years, and in that case the words "if any" would have just as sensible a meaning as on the other hypothesis. In truth, the words are often needlessly used by way of caution, and it would be unreasonable to give them such weight as to destroy the obvious meaning of the statute or document in which they are contained.

Their Lordships expressed their agreement with the decision of the Court of Appeal in *City of Toronto v. Toronto R. W. Co.* (1905), 5 O.W.R. 130.

*Appeal dismissed with costs.*