

With regard to the 5th question, counsel for plaintiffs virtually conceded that, unless I felt at liberty, in view of the decision of the Court of Appeal in England in *Wolverhampton v. Emmons*, [1901] 1 K. B. 515, to decline to follow the decision of our own Court of Appeal in *City of Kingston v. Kingston Electric R. W. Co.*, 25 A. R. 462, this question must be answered in the negative. That this latter decision is in point could not, I think, be successfully controverted. But for a recent enactment of the Ontario Legislature, I might, upon the authority of *Trimble v. Hill*, 5 App. Cas. 342, 344, if I thought this case within the principles enunciated in *Wolverhampton v. Emmons*, have followed that decision. But, in my opinion, sec. 81 of the Ontario Judicature Act (R. S. O. 1897 ch. 51) obliges me to follow the decision of the Ontario Court of Appeal, notwithstanding any later expression of opinion in any English Court except the Judicial Committee of the Privy Council. . . . I answer the 5th question in the negative.

To answer the 6th question affirmatively would be in effect to declare that having covenanted . . . "to establish and lay down new lines and to extend the tracks and street car service as may be from time to time recommended by the city engineer," etc. (condition 14 and clause 12 of the agreement), the company nevertheless may at any time elect, in lieu of performing their covenant, to forfeit their exclusive rights to the extent provided by condition 17. A not improbable consequence would be that the company would from time to time refuse to lay down tracks upon streets in sparsely populated outlying districts. Upon these streets, far distant one from another, no person or company could be found willing to undertake the operation of isolated lines of street railway. No rival system could be established, and, if it could, all the advantages of the single system throughout the city contemplated by the arrangement between the city and the company would be lost to the former. It is impossible to believe that the parties intended that the company should enjoy an option so entirely inconsistent with the manifest object and general tenor of the bargain which they made. Nor do I think any rule of construction requires me to hold that the city relinquished, for such an illusory and shadowy alternative right, whatever substantial redress it would otherwise be entitled to claim for breaches of obligations which may be imposed upon the company under the provisions of condition 14. To question 6 I therefore make answer that "the privilege of the city to grant to another person or company, for failure of the city to establish and