must assume that, after due consideration of their value, having regard to their purposes and use, there was fairly allowed for them all that should have been allowed. But the company seeks to add to the sum so allowed something as the value of the earning power which these works, plant, and property might have in its hands if retained until 1911. There is no language in the agreement to justify this contention.

The company claims that the right which is thus ended by the agreement is a franchise, and passes under the term "property." But it is manifest that the word is not used in its widest sense—and it was not the intention of either party that it should be so read. Its meaning is restricted by the words which precede it, as well as by those which follow it. It was evidently not intended to comprehend everything the company possessed. The so-called franchise is no more included in the word "property" than the money in the bank, or the book debts or assets of a like nature, belonging to the company. It is far from clear that the company parted with anything in the nature of a franchise which it would be of any value to the city to acquire. The company could not, and did not, part with its corporate franchise. The privilege of using the streets for the purposes of the business ended naturally with the purchase of the works, plant, appliances, and property; and it was not needful for the city to acquire either one or the other to enable it to carry on business.

A good deal was said in argument about the justice of the city paying for all it acquired under the agreement; but the real question on the construction of the agreement is, for what did the city agree to pay? And upon this question the arbitrators came to the proper conclusion.

The appeal also fails as to the claim to add 10 per cent. to the amount of the price found by the arbitrators. There is nothing in the agreement, or in the circumstances, to warrant the arbitrators dealing with the case as one of expropriation under the statute. And, doubtless, the arbitrators in arriving at the price took all the circumstances into consideration, and made every reasonable allowance.

The appeal should be dismissed.

——— JANUARY 26TH, 1903.

C.A.

McKAY v. GRAND TRUNK R. W. CO.

Railway—Injury to Person Crossing Track—Speed of Train in Town—Fences—Warnings—Statutory Provisions—Findings of Jury.

An appeal by defendants against the judgment for plaintiff at the trial before MACMAHON, J., and a jury.