

power of acquisition and a municipal body which does possess such powers in the way of expropriation.

The rule is recognized in American cases that land owned by a company whose business constitutes a public use, not in actual occupation or not essential to the undertaking, stands on the same footing as that of a private owner, and may be expropriated: see *Railroad Co. v. Belle River*, 48 Ohio St. R. 273, and *Y. v. P.*, 201 Pa. St. 457. Other cases are referred to and the matter is discussed in 15 Cyc. Law and Practice, pp. 612 et seq.

I agree with the ground of decision below, that this is not a case for a declaratory judgment.

Appeal dismissed with costs.

MAGEE, J.:— . . . The claim for an injunction was practically abandoned, and merely a declaratory judgment asked for. In the absence of danger involving the actual relief sought by the writ, I do not see that the company are any better entitled to an abstract declaration, which may never be required, that the city could not expropriate, than the city would be to ask one that it could do so if it so desired: *Stewart v. Guibord*, 6 O. L. R. 262, 2 O. W. R. 168, 554; *Bunnell v. Gordon*, 20 O. R. 281; *Barraclough v. Brown*, [1897] A. C. 615; *North-East Marine Co. v. Leeds Forge Co.*, [1906] 1 Ch. 324; *Offin v. Rochford Council*, ib. 342. . . .

Appeal dismissed with costs.

MABEE, J.:—The Court has undoubted authority to grant a declaratory judgment without incidental relief. The cases, however, shew that this is a discretionary power: *Bunnell v. Gordon*, 20 O. R. 281; *Thomson v. Cushing*, 30 O. R. 123. The Chief Justice, in the judgment in appeal, deals very fully with the facts and exercises the discretion of the Court in refusing the declaration asked for. I cannot say that he was in error in the exercise of such discretion, and the appeal, in my opinion, fails upon that ground alone. I say nothing as to the powers of defendants to expropriate the lands in question.