

In 1891, that company having in the meantime entered into an arrangement with the Kingston Electric Light Company for the purchase of its plant, an Act of the Legislature of Ontario, 54 Vict. ch. 107, validated the agreement and changed the name of the City of Kingston Gas Light Company to the Kingston Light, Heat and Power Company. By sec. 10 it was enacted that sec. 35 of 11 Vict. ch. 13 be repealed, thus extending the duration of the company. But it also placed a limit to its existence by providing that at any time from and after 20 years from the date of the passing of the Act (4th May, 1891), the City of Kingston should have the right to expropriate the works and property of the company in the manner specified. By this enactment the company was protected against compulsorily parting with its works and property to the city until May, 1911. But in 1896 the company entered into the agreement now in question, by which it gave to the city a new right to acquire the works and property at an earlier period. The agreement is a lengthy instrument, dealing with several matters; but, as regards the acquisition of the property by the city, the substance of it is, that upon the city giving one year's notice previous to the 1st January, 1896, it should have the option of purchasing and acquiring all the works, plant, appliances, and property of the company, used for light, heat, and power purposes, both gas and electric, at a price to be fixed by arbitration; and that, upon the acquisition by the city of the works, plant, and property, the company should cease to carry on its business.

The city having exercised its option, it was contended before the arbitrators, on behalf of the company, that in ascertaining the price to be paid by the city the arbitrators should allow for the value of the earning power, or franchise or rights of the company, under 54 Vict. ch. 107, or otherwise. The majority of the arbitrators held that the company was not entitled to any allowance in respect of this claim. Their decision was upheld by Lount, J., and the company has renewed its contention in this Court.

We think the arbitrators placed the correct construction upon the agreement. What the company asks is, in effect, that it shall be compensated for the termination of the right which, but for the agreement, it would have of carrying on the business until 1911. That is to say, the company is claiming, not merely the price of the works, plant, appliances, and property of the company used for light, heat, and power purposes, but this price and the price of something else in addition.

No objection has been taken to the amount allowed as the price of the works, plant, appliances, and property, and we