

Then, if the dealings between the parties were upon a footing of credit instead of cash, even if the actual term of such credit is not clear upon the evidence, a demand of payment would, I think, be necessary before action. Such a demand would seem to be involved as a necessary or implied term in the contract, which is practically one to pay upon request, just as in the case of money sued for as paid in mistake: see *Freeman v. Jeffries*, L. R. 4 Ex. 189.

But, in my opinion, the plaintiff is not obliged to rest upon an implied promise to pay upon request. If his story is believed and accepted, as I think it should be, there was an express agreement between them that Marvin Howe was to hold the money at least till the plaintiff demanded it. It did not and could not, having regard to this agreement, have become due and payable until so demanded, with the result which I think inevitable, that, as there was no demand it proved prior to 16th May, 1895, the action was in time, and, therefore, that the appeal must be allowed, and judgment granted in plaintiff's favour for the amount found to be owing, with interest, and with costs in this Court and the Court below.

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JANUARY 26TH, 1903.

C.A.

RE CITY OF KINGSTON AND KINGSTON LIGHT,  
HEAT AND POWER CO.

*Company—Sale to Municipality of "Works, Plant, Appliances and Property"—Franchise or Value of Earning Power—Arbitration and Award—Ten Per Cent. Addition.*

Appeal by the company from an order of LOUNT, J., in Court (3 O. L. R. 637, 1 O. W. R. 194) dismissing an appeal by the company from an award.

R. T. Walkem, K.C., and J. L. Whiting, K.C., for appellants.

D. M. McIntyre, Kingston, for the city corporation.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, JJ.A.) was delivered by

MOSS, C.J.O.—The main question in this appeal turns upon the proper construction of an agreement entered into between the company and the city corporation on the 14th July, 1896.

The City of Kingston Gas and Light Company was incorporated by Act of the Legislature of the Province of Canada, 11 Vict. ch. 13, with extensive but not exclusive rights with regard to the manufacture and supply of gas in the city of Kingston. Under sec. 35 of the Act, the company and its powers were to end at the expiration of 50 years, i.e., on the 3rd March, 1898.