

and consider it in the somewhat hazy light in which the plaintiff presents it; whatever it is,—a contract, or a mere attempt at a contract, the plaintiff wants to prevent its going any farther because it is illegal. These illegalities need not be enlarged on at this moment; but granting them all for the sake of testing the plaintiff's position, what does that position amount to? Simply to this:—that the corporation must be stopped because what it is doing or trying to do is illegal. Now it was pointed out by the Court very early in the argument, and assented to on both sides, that this illegality must be shown. It must be seen that the city is going beyond its powers. It won't do to say that being within its powers, it is exercising them in a way more or less beneficial or prejudicial to this one or to that one. Now put it in any way you like:—these proceedings of the corporation, whatever their nature—whether a contract or an attempt at a contract—must be either the one thing or the other:—what is done or contemplated (whichever you please) must either be illegal or not. If not, the plaintiff has no case; if on the other hand, it is all illegal, an interim order would be utterly useless, for whether you take the contract as complete now (which is the view of it I incline to) or whether it will only be completed by the signature of the mayor, can make no difference. In either case the whole thing would be contrary to law, and the action would be maintained finally and absolutely whether there was an interim order or not. They either have the power or they have not. If they have the power it is useless to ask to stop them in the exercise of it: if they have not the power, the signing won't mend the matter, for it is surely not by affixing a signature to an illegal contract that it can be made a good one.

I might properly stop here, and refuse to grant the order that is asked for, and decline to go farther, or notice the particular points in which the illegality is said to consist—since it is clear that illegal or not—the order would be entirely useless; but I have a great respect for arguments ably and honestly used, as I am sure they have been used in this case—as well as with marked ability—by both of the learned coun-

sel who urged the plaintiff's rights. I will only say that these points are two in number—the point of monopoly, and the point of power to fix the price of gas to the consumer. It is easy to show that neither in point of law nor in point of fact has either of these arguments anything in it. Monopoly as a legal term—a thing proscribed by law—which the crown can't give a right to, is a very different thing from the monopoly of common talk. Monopoly of course there is in the loose and popular sense; and so there would be in contracting as they have done for eight years without interruption by others—or for four years or four months; but it is not monopoly in law—there is neither perpetuity nor legislation as the authorities require; it is not monopoly in the language of the law, but in the language of the streets. So, too, as to fixing the price of gas to the consumer: they do nothing of the kind. They stipulate for the city generally:—and there is all the difference in the world between allowing a Gas Company to lay down pipes, and make gas to fill them which people may use or not as they please, at a price to be agreed between the maker and the consumer, and in doing this stipulating that there is to be a limit to the charge,—I say there is all the difference possible between this—which is what has been done here—and agreeing or assuming to agree for the consumer to any fixed price, or any price at all; the whole thing being left to the consumer's option whether he will have it or not. And here I ought to notice what I consider the principal fallacy underlying the plaintiff's pretensions. I have said there has been no legislation. I mean of course municipal legislation, by-laws, conferring what is called an exclusive right. I say now that the fallacy at the bottom of the plaintiff's pretensions appears to me to be that he has assumed the powers exercised by the corporation to be powers under the 65th sub-section of section 123 of the Act 37 Vict., c. 51, which gives power to make by-laws for lighting the city or any part thereof by gas or otherwise. Here there has been no by-law, and that is not the power that has been used at all. The power used here is the power given under sec. 1, which gives