

Lount, J.] CITY OF KINGSTON v. KINGSTON L. H. & P. CO. [March 14.
*Company—Franchise—"Works, plant, appliances and property"—Purchase
 by municipal corporation of gas works.*

By agreement between the city of Kingston and the company the former was to have the option of purchasing and acquiring the "works, plant, appliances and property" of the company used for light, heat and power purposes, both gas and electric, upon giving to the company notice as therein provided, at a price to be fixed by arbitration under the Municipal Act. The majority of the three arbitrators in fixing the value of the "works, plant, appliances and property" included nothing for the earning power or franchise and rights of the company.

Held, that they were right in so doing, though the determination of the question was not to be decided by the meaning to be attached to the word "property," but by the fair interpretation and construction of the agreement. The word "property" as used in the agreement was on the fair construction of the instrument limited to the preceding words, and these words were not to be construed so as to include such an intangible right as the franchise or good-will of the company.

Walkem, K.C., and *Whiting*, K.C., for the company. *McIntyre*, for the city of Kingston.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [March 14.

HALL T. ALEXANDER.

*Easement—Projecting eaves—Descending water and snow—Common owner
 —Conveyances by—Grant and reservation of rights.*

Plaintiff's predecessor in title owning a lot of land built two houses thereon with a passage way between them and the eaves trough, and part of the eaves of the defendant's house projected over the passage way. He then conveyed to defendant's predecessor in title the westerly house "with the privilege and projection of the roof . . . as at present constructed," and covenanted for the quiet and undisturbed enjoyment of the projection, and that on any sale or conveyance of the house to the east he would "save and reserve the right . . . to such projection." Subsequently he conveyed the easterly house with the land between the two houses to the plaintiff "subject to the right . . . to the use of the projection . . . as at present constructed." In an action to compel the defendant to prevent the discharge of water, snow and ice from his roof into the plaintiff's passage way,

Held, that the defendant was not bound to prevent the snow and water discharged from the clouds upon his roof from falling from it upon the plaintiff's land, and that the easement of shedding snow and water, as had been done ever since the defendant's house was built, was necessary to the reasonable enjoyment of the property granted; that the grantor could not insist upon the grantee altering the construction of the roof so as to prevent