

The Ontario Weekly Notes

VOL. XI. TORONTO, DECEMBER 1, 1916. No. 12

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

OCTOBER 23RD, 1916.

*TORONTO ELECTRIC LIGHT CO. v. CITY OF TORONTO.

Contract—Municipal Corporation—Electric Light Company—Overhead System—Erection of Poles in Highways—R.S.O. 1877 ch. 150—45 Vict. ch. 19, sec. 2—“Only upon”—Condition Precedent—Formal Agreement—Acquiescence — Estoppel — Agreement as to Underground System—Construction and Effect—Subsequent Agreements—Abandonment of Right (if any) as to Overhead System.

Appeal by the plaintiffs from the judgment of the First Divisional Court of Ontario, 33 O.L.R. 267, 8 O.W.N. 87, reversing the judgment of MIDDLETON, J., 31 O.L.R. 387, 6 O.W.N. 349, and dismissing the action.

The appeal was heard by VISCOUNT HALDANE, LORD ATKINSON, LORD SHAW, and LORD PARMOOR.

Sir John Simon, K.C., I. F. Hellmuth, K.C., and A. W. Anglin, K.C., for the appellants.

Sir Robert Finlay, K.C., and G. R. Geary, K.C., for the defendants, respondents.

The judgment of the Board was delivered by LORD ATKINSON, who, after setting out the facts and referring to the statutes R.S.O. 1877 ch. 150 and 45 Vict. ch. 19, said that, in order to determine the question whether the decision of Middleton, J., or that of the Appellate Division was right, it was necessary to decide what was the true meaning of the words “only upon and

*This case and all others so marked to be reported in the Ontario Law Reports.