CORPORATION OF THE CITY OF CUMBERLAND *v.* CUMBERLAND ELECTRIC LIGHT COMPANY

1931

*May 4.
*May 18.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Agreement—Franchise to electric light company from city—Fifty-year term subject to right of city to take over—Arbitration as to value—Profits of unexpired term included in award—"Undertaking, property rights and privileges"—Meaning of—Appeal.

APPEAL by the appellant from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of the Supreme Court, Macdonald C.J., which in turn had dismissed an appeal from the award of two arbitrators.

An arbitration was held under the authority of *The Arbitration Act,* R.S.B.C., 1924, c. 13, and was to determine the price which the city of Cumberland was to pay for the undertaking, property rights and privileges of the Cumberland Electric Light Company Limited. On the 19th of December, 1901, the city of Cumberland entered into an agreement with the Cumberland Electric Light Company giving the company the right to instal and operate an electric light plant within the municipality, such rights to exist for a period of fifty years, subject to the right of the municipality to purchase the undertaking, property rights and privileges of the company at any time at a price agreed upon, or in default of agreement, as found by arbitration. In 1929 the municipality decided to take over the undertaking, and as the parties could not come to terms as to price, arbitrators were appointed and made an award, fixing the value of the undertaking, property rights and privileges of the company at $74,000, and they found that of this sum of $74,000 the sum of $36,000 was the value of the physical assets, the "physical assets" being defined as made up of the "fixed assets and supplies on hand."

The Court of Appeal held that the agreement was giving the city the right to purchase the whole undertaking; that the submission was to assess the value of the "undertaking, property rights and privileges of the company," and that the price to be paid should represent the value of the whole

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Smith and Cannon JJ.

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undertaking and was not restricted to the "physical assets" of the company.

The grounds of appeal submitted to the Supreme Court of Canada were that the judgment of the Court of Appeal was erroneous, in point of law, in that by the notice of purchase dated the 30th day of July, 1929, the franchise to supply electric light to the inhabitants of the municipality did in fact and in law terminate on that date; that being so, there was no period for which the arbitrators could allow $38,000 or any sum for prospective loss of profits. The agreement should be construed in the light of the fact that the appellant corporation had no power to buy back and pay for the franchise granted. The appellant corporation was the creature of the statute, R.S.B.C., 1924, c. 179, and as such had no power to deal in its own franchises to that extent.

The Supreme Court of Canada, after hearing counsel for the appellant and for the respondent, reserved judgment; and, later, dismissed the appeal with costs.

Appeal dismissed with costs.

N. H. McDiarmid for the appellant.

J. W. de B. Farris K.C. for the respondent.