In *Toronto Street Railway Company* v. *Fleming*, 37 U.C.R., at p. 123, Mr. Justice Burton holds that the company's rails, being fixed to realty, became part of realty, and, as the streets are exempt from taxation, so are the rails. It would, of course, follow from this that, as the pipes of gas and water companies are embedded, and so fixed in the realty of streets, they were part of the realty, and so exempt. But, as pointed out by the learned County Judge of York, there is much conflict between s-ss. 1 and 2 and 6 and 7 of s. 7 of the Assessment Act. This conflict is fully discussed by the learned judge (*ante* p. 163), and need not be repeated. It may be suggested, however, that the exemptions mentioned in s-ss. 1 and 2 refer to original surveys under Crown authority, and not private surveys by corporations or individuals. A great part of the city of Toronto is a Crown survey. The city of Guelph was laid out by the Canada Company. The city of Hamilton is composed of subdivisions of farm lots by private individuals, the grantees of the Crown. In the two last-mentioned cities the only highways and roads laid out originally by public authority would be the concession and side lines of the original township surveys. Would it be possible that gas mains are taxable when laid along a street which was originally laid out by the Crown, under s. 7, s-s. 2, of the Assessment Act, while similar mains would be exempt where laid on streets laid by private survey? But let it not be forgotten that, while s. 7 declares all property liable to taxation, "property" is limited by s-s. 8 of s. 2 to the definitions of s-ss. 9 and 10 of the same section of the same Act.

The question, easement or not, seems to be regarded by both the learned judges as being crucial, and Judge McDougall discusses it at great length, incidentally considering the supposed conflict between *Chelsea Waterworks* v. *Bowley*, 17 Q.B. 358, and a number of cases decided under the Poor Rates Act, 43 Eliz., c. 2. But, as Lord Campbell points out in his judgment in this case at page 361, and again in *Regina* v. *East London Waterworks*, 18 Q.B., at page 716, there was a marked distinction between the Chelsea Waterworks case, decided under 38 George III., c. 5, and cases decided under the statute of Elizabeth. The statute of George, as the Chief Justice is careful to point out, charges the tax against the land, while the statute of Elizabeth charges the person, and as the Chelsea company were not owners, and not tenants, under the provisions of their charter, they were not assessable.