

In *Toronto Street Railway Co. v. Fleming*, 37 U.C.R. 116, the plaintiffs were assessed for portions of certain streets used by them for the purposes of their railway. It was held by the Court of Error and Appeal, following *Chelsea Waterworks Co. v. Bowley*, that the portion of the street so occupied by the company was not rateable as land. So far as I can gather from the report, the statute under which the decision was rendered appears to be analogous to s. 31.

In *Re St. Catharines and Welland Gas Light Co.*, 30 C.L.J. 205, it was held that gas mains laid by the company upon the public streets were chattels, or, at most, an easement, and in either event were not assessable as land.

In *Re Consumers Gas Co. Toronto*, 30 C.L.J. 157, it was held that gas mains laid upon the public streets were assessable as machinery forming an indivisible part of the gas company's plant, and appurtenant to the lands owned by them. In his judgment in this case McDougall, C.J., says, at p. 158: "This is not an assessment, in name, at any rate, upon the portion of the highway occupied by the mains themselves; and there is no legal difficulty that I can discern in levying and collecting the taxes based upon the whole assessment. A warrant directed against the company's property to realize the taxes could be executed upon the company's premises, and, in case sale should become necessary, their lands, buildings, plant, and machinery could be sold. Under such a sale the treasurer's deed of the whole property would, no doubt, pass to the purchaser the gas works and the fixed machinery, and would include the mains as part of the general plant."

I cannot accept this proposition, which appears to be the basis of his judgment, and, if I were called upon to do so, I would hold that, upon a sale for taxes under this assessment of the land upon which the appellants' pumping machinery is erected, the treasurer's deed would convey to the purchaser merely the land and the improvements thereon, and that no portion of the pipes and mains under the streets of the city would pass by the conveyance.

I see nothing to prevent the appellants erecting another pumping station on another parcel of land, and severing the connection between the present station and the street mains. Can it be contended that upon a sale for taxes of the present station under the assessment in question the purchaser would be entitled to the use of the street mains, and to prevent the user thereof by the appellants? I see no reason why the right to assess the street mains and pipes as part of the machinery and improvements upon the lands on which the pumping station is erected should not depend upon the question whether they would pass to the purchaser upon the sale of those lands for taxes.

Upon consideration of the provisions of the ordinance under which the assessment in question was made, and such authorities as I have been able to refer to, I can come to no other conclusion than that the pipes and mains laid under the streets are not liable to assessment as land or real estate.