

gage after reciting the terms of the lease proceeded to convey to the mortgagee the indenture and the benefit of all covenants and agreements therein, the leased property by description and "all and singular the engines and boilers which now are or shall at any time hereinafter be brought and placed upon or affixed to the said premises, all of which said engines and boilers are hereby declared to be and form part of the said leasehold premises hereby granted and mortgaged or intended so to be and form part of the term hereby granted and mortgaged"; the *habendum* of the mortgage was "To have and to hold unto the said mortgagee, their successors and assigns for the residue yet to come and unexpired for the term of years created by the said lease, less one day thereof, and all renewal etc."

Held, reversing the judgment of the Court of Appeal, that the premises of the said mortgage above referred to contained an express assignment of the whole term, and the *habendum*, if intended to reserve a portion to the mortgagor was repugnant to the said premises and therefore void; that the words "leasehold premises" were quite sufficient to carry the whole term, the word "premises" not meaning lands or property, but referring to the recital describing the lease as one for a term of twenty-one years.

Held further, that the *habendum* does not reserve a reversion to the mortgagor; that the reversion of a day generally, without stating it to be the last day of the term, is insufficient to give the instrument the character of a sub-lease.

Appeal allowed with costs.

Armour, Q.C., and *Irving*, for appellant.

Arnoldi, Q.C., for respondents.

1st May, 1897.

Ontario.]

CONSUMERS' GAS CO. v. TORONTO.

Assessment and taxation—Exemptions—Real property—Chattels—Fixtures—Gas pipes—Highways—Title to portion of highway—Legislative grant of soil in highway—11 Vict., ch. 14 (Can.)—55 Vict., ch. 48 (Ont.)—Ontario Assessment Act, 1892.

Gas pipes laid under the streets of a city which are the property of a private corporation are real estate within the meaning of the "Ontario Assessment Act of 1892" and liable to assess-