

"lean-to" is No. 261, and about 8 months before the sale of it to the appellant it was let by the respondent to a tenant. The pipe connection with the main sewer was at this time in No. 263 only; and, when No. 261 was rented, the respondent made a connection from his connecting pipe to a temporary closet on No. 261. A connection from the water pipe in No. 263 had been made previously for the convenience of a former tenant of No. 261, and that was the position of matters when the conveyance was made to the appellant.

It is contended by the appellant that, by the conveyance, there passed to him the right to have uninterrupted use of the drain leading from house No. 261 through house No. 263 to the drain pipe in it, and the right to have the water conveyed to house No. 261 through the pipe leading to it from house No. 263; and in support of this contention *Israel v. Leith* (1890), 20 O.R. 361, and the cases there referred to, were cited and relied upon.

It was argued for the respondent that, in the circumstances of this case, *Israel v. Leith* has no application; that the drain and water pipes in question were put in for a merely temporary purpose in connection with the "lean-to," and for the accommodation of the tenants of it, and were not intended to be permanent; that the "lean-to" was a very old building, and it had been the intention of the respondent, if he had not sold it, to pull it down and replace it by another structure; and that Frohman, to whom the respondent appears to have sold the land now owned by the appellant, who acquired Frohman's right, intimated to the respondent, at the time he purchased, that it was his intention to pull down the building and put up another; that, according to the by-laws of the City of Hamilton, it is unlawful to drain two separate tenements by means of a common pipe within either of them, and it is also unlawful for any person, being an occupant or tenant in any house or building, to use or apply the water supplied to it to the use or benefit of others, without permission in writing having been first obtained from the waterworks department; and that, after the conveyance to the appellant, it was not only the right but the duty of the respondent, in order to conform to the provisions of these by-laws, to discontinue the joint system of drainage, and to discontinue to use or apply the water which was supplied by the pipe which led to his building, to the use or benefit of the occupant of the appellant's building without the permission prescribed by the by-law, which had not been obtained.

The learned County Court Judge gave effect to the latter of