street pipes was used for lighting; and that this action of the company ipso facto worked a forfeiture of the pipes and of the right to place and have them under the street, and precluded the gas company from recovering any compensation for their injurious affection.

The appeal was argued on the assumption by both parties that the case was a proper one for claiming compensation under the Municipal Act rather than by an action against the city corporation for negligence in laying its water-pipes, and on the assumption that the rights originally conferred by by-law 110, passed in 1854, were still in force. The city corporation allowed the company to move and relay these pipes, and had not assumed to cancel the license to have the pipes there.

The appeal ought to be disposed of, in the learned Judge's opinion, upon the short and simple ground that the pipes always had been and were still the property of the gas company and that they had been injuriously affected by the city corporation.

Reference to the Act respecting Gas and Water Companies, 1853, 16 Vict. ch. 173, under which the company was incorporated and to the company's special Act, passed in 1865, 28 Vict. ch. 88.

It was admitted that the pipes were laid by the gas company more than 40 years ago. They had always been and were now connected with and formed part of the general distributive system of the gas company, and were, for many purposes, real estate: Consumers Gas Co. v. City of Toronto (1897), 27 Can. S.C.R. 453.

Quite apart from the express words of the special Act, it was clear that, the pipes having been laid and having remained for so many years in the same place, there was a presumption that such use of the street by the gas company was legal. See the cases collected in Abell v. Village of Woodbridge and County of York (1917), 39 O.L.R. 382, at p. 389.

The onus was, therefore, on the city corporation to establish that the property in these pipes and the right to retain them where they were had become forfeited. So far from this onus being discharged, the arbitrator had found that the city corporation had failed to shew by evidence that the company was not using the main for the conveying of gas for lighting. He had also found positively that a portion of the gas passing through this main was used for lighting purposes.

No act on the part of the city corporation purporting to declare or enforce a forfeiture was shewn; but, even assuming that some such act had been shewn, and assuming further that the use of the pipes for the conveyance of gas for heating and cooking was unwarranted, that unwarranted user could not confer on