

is liable to pay the expense incurred in lowering the gas main the respondent is entitled to recover the amount sued for, and the action is really brought for the purpose of obtaining a judicial determination as to whether the cost of such a work is to be borne by the appellant or by the respondent.

When the appeal was opened and the fact that the case is a test one was mentioned, it was suggested that it was undesirable that the parties should be concluded by a judgment of this Court from which there is no appeal and it was agreed by counsel that the case should be treated as if the action had been removed into the Supreme Court.

If it were not for the decision of the Supreme Court of Canada in *Consumers Gas Co. v. Toronto*, 27 S. C. R. 453, and the provisions of section 325 of the Municipal Act, R. S. O. 1914, ch. 192, I should be inclined to agree with the conclusion of the learned Judge of the County Court. It was, however, held in that case that the soil occupied by the pipes of the appellant is land taken and held by the appellant under the provisions of its Act of Incorporation (11 Vict. ch. 14) and by section 325 it is provided that "where land is expropriated for the purposes of a corporation or is injuriously affected by the exercise of any of the powers of a corporation or of the council thereof, under the authority of this Act or under the authority of any general or special Act, unless it is otherwise expressly provided by such general or special Act, the corporation shall make due compensation to the owner or the land expropriated, or where it is injuriously affected by the exercise of such powers for the damages necessarily resulting therefrom. . . ."

The sewer in the laying down of which it became necessary to remove the pipes of the appellant was constructed under the authority of paragraph 7 of section 398 of the Municipal Act, which empowers the councils of all municipalities to pass by-laws "for constructing, maintaining, improving, repairing, widening, altering, diverting, and stopping up drains, sewers or watercourses; providing an outlet for a sewer or establishing works or basins for the interception or purification of sewage; making all necessary connections therewith, and acquiring land in or adjacent to the municipality for any such purposes."

The land of the appellant, i.e., the soil in which its pipes were laid, was injuriously affected by the exercise of the