

they exercise their power of altering the level of the road, whether by raising or lowering it, to exercise at their own expense their power of altering the position of the pipes for the benefit of the company owning the pipes, must less any duty to place the pipes at a depth below the new surface corresponding with the depth at which they stood below the old surface. I think that no such duty is imposed upon the appellants. The real question is on whom the expense of altering the position of the pipes is to fall. It appears to me that it falls on the company, as between the road authority and the company, I think that the road authority are paramount. They are entrusted with the powers over the street, not for their own profit as a statutory body, but for the benefit of the public using the streets as a highway. The statutory undertaking of the water company is vested in them with a view to their own profit as a company, etc., "and for the purpose of affording a supply of water to consumers of water in their district."

Without going further into the various cases and authorities referred to, I am of opinion that the corporation of the city of Toronto has the paramount duty of providing for the health of the citizens with reference to the construction of sewers on their streets, and that the defendants have only the right to use the streets for their own benefit, subject to that paramount authority, and that the defendant company cannot compel plaintiffs to go to the expense of removing their pipes when it is necessary in the public interest they should be removed, but they are compelled to remove same at their own expense. In coming to this conclusion, I follow the decisions of the American authorities which, in my opinion, are applicable to the point at issue. Judgment will be entered for the plaintiffs for \$222.22, and costs of the action.