

Although this question was not directly raised in the Consumers' Gas Co., of Toronto case, the learned Chancellor in his judgment has clearly stated his views on the point. He says he thinks the better view is to treat the mains, and so much of the soil as is used therewith, as realty of the company, and in this respect assessable. "As to this underground soil," he proceeds to say, "the gas company is both owner and occupier." Even if I were not bound by this portion of the judgment, I should arrive at the same conclusion on the authorities therein referred to, and in the judgment of the learned judge of the County Court of the County of York in the same matter; but I consider this limited to that portion of this underground soil exclusively occupied by the company with their mains, that is, the displaced portion and the soil immediately touching these pipes.

The question then arises as to the proper valuation of this subsoil. It seems to me that, placed where it is, it has no commercial value. Its only value is as a support and protection of these pipes, and is only sufficient to give the nature of realty to these mains. Apart from the mains it is not marketable. The assessor's reasoning whereby he values it at the price of as many surface acres, including the soil under and the space above, is so manifestly wrong that no argument is required to show its fallacy. None of the company's money is invested in it, none of its capital stock is there. It seems to me that any valuation placed upon it beyond a nominal valuation would be purely arbitrary, in fact mere conjecture. The right to break up the surface of the street, to get to it when and where necessary, cannot in my opinion form any proper element in such valuation under the Assessment Act.

It is proved that the value of these second-hand pipes as old iron, for which alone they could be sold, if apart from this "going concern," would be \$9,300, less the cost of getting them out of the ground. Their value as part of this company's property as a "going concern" is \$75,000. Now what gives this additional value? It seems to me it is made up at least partly, if not entirely, by the support and protection, and the right to the support and protection, of the underground soil to which I have referred. Without this support and protection, which is the only value of this soil to this company, I think this assessment of these old pipes would be excessive. For these reasons I conclude that in confirming the assessment of these mains for \$75,000 where they are, and because they have a right to be where they are, I have exhausted the company's whole assessable real estate in these streets. The assessment on these two heads will therefore be reduced to \$75,000. I can see no evidence or reasoning on which I could fix upon any certain sum in addition as the "actual cash value, as it would be appraised in payment of a just debt from a solvent debtor."

There remains the question as to whether the meters are in any sense assessable as part of the company's realty. If they are personal property of the company they are exempt under sub-section (2) of section 34 of the Assessment Act of 1892. Where not in use they certainly are not affixed to the company's real estate, they are not then fixtures. When in use they are not on the company's real estate in any sense, nor on real estate occupied by them. They are on the real estate of the consumers. On one side they are