is omitted, as the judgment proceeds upon the other ground only.]

DRAPER, C. J., of Appeal.—The rule prescribed by the statute, Consol. Stat. U. C. ch. 55, in relation to the question raised, is contained in the 9th section; all land and personal property is liable to taxation.

The exception applicable in this case is contained in the 7th sub-section of the 9th section, the property to any county, city, town, township or village "whether occupied for the purpose thereof or unoccupied."

The word "property" includes both real and personal estate.

A philological discussion has been raised upon the word "whether."

This word is used as a pronoun, and also as a "particle expressing one part of a disjunctive question in opposition to the others" (*Johnson's* Dictionary). The Imperial Dictionary defines it as a pronoun or substitute.

As a pronoun, both the authorities explain it to mean, which of two; but the latter, after referring to the example taken from the 21st chapter of St. Matthew's Gospel, v. 31—"whether of them twain did the will of his father"—asserts that "in this sense it is obsolete," and adds, as an additional sense, "Which of two alternatives expressed by a sentence or the clause of a sentence, and followed by *or*," and gives this example: "Resolve *whether* you will go or not: *i. e.*, you will go *or* not go; resolve *which*.'

Speaking with an attempt at strict accuracy, the word *whether* is not used in this section of the act in either of the senses.

As a pronoun, it is not used to signify which of the two kinds of property—*i. e.*, property occupied for the purpose of the municipality, or property not occupied at all—is to be exempt; and in the former case an actual occurrence is referred to, not a mere possession incident to title. Obviously it was intended to exempt, not one, but both—the property occupied for the purpose, &c., and unoccupied property.

As a "particle or substitute" it is not used to denote one or other of two alternatives contained in the sentence, for their is no selection of the one or exclusion of the other intended; both are equally exempted.

This the plaintiff agrees, or indeed insists on. He relies on the word "all" in the beginning of the exemption, and argues that the later words, "whether," &c., do not restrict this general word so as to limit the exemption to land occupied for the purpose of the corporation or unoccupied. He, in effect, treats these words as redundant, or intended as a mere illustration of the meaning of "all," neither confining or expressive of its whole meaning. He adverts to and urges on our consideration the previous sub-section 4, of the exempting clause in relation to real estate of universities, or other educational institutions where the exemption is declared to exist only so long as such real estate is actually used and occupied by such institution, but not if otherwise occupied, or unoccupied, arguing that the judgment gives as wide an effect to the language of sub-sec. 7, now under consideration, as could be given to the more express and particular terms of sub-sec. 4. A suggestion was certainly thrown out, that land for which a tenant paid rent to the corporation was occupied, "for the purposes thereof," but I did not understand that the plaintiff's counsel placed much reliance on this suggestion, nor do I think it requires an answer; it could not be seriously contended that this was an occupation for the "purposes"—*i. e.*, the end and object of creating municipal corporations.

Lord Chief Justice Holt is reported to have said: "I think we should be very bold men, when we are entrusted with the adminstration of the law and the interpretation of acts of parliament, to reject any words that are sensible in an act." I shall not endeavor to gain a reputation for courage by treating as nugatory the lost words of this section.

I should be sorry to infringe upon the modern rules adopted in construing statutes—namely, to construe those "according to the plain and popular meaning of the words," and not to adopt a construction unwarranted by such words, in order to give effect to what I might suppose to be the intention of the legislature; but I should certainly not be deterred by philological cobwebs from an exposition of a statute which, in my judgment, is in accordance with the intent to be deduced from a comparison and consideration of its whole language.

I cannot read this 7th sub-section by itself without a conviction that, however easy it would have been to have used a clearer form of expression, the sole object of the latter part was to explain and limit the general expression "the property belonging to any county," &c., and to give to the whole sub-section the meaning it would certainly bear if "and" were substituted for "whether."

When the principal member of section nine is referred to in connection with the seventh subsection, this opinion is strengthened. The legislature may reasonably be assumed to have known that municipal corporations in this Province had, or might hereafter have property, neither occupied for the purpose therefor nor occupied—for example, buildings at one time both necessary and adequate for their convenience, but which under changed circumstances were no longer wanted, and which it might not be desireable to sell. Such buildings if leased, would most probably not be occupied for any corporate purpose, and still would not be unoccupied.

It would make sub-section seven repugnant to the expressed object of the section of which it forms part so to construe it, and thereby to exempt property so circumstanced from liability to taxation, and yet this repugnancy will arise, and arise from what I think a perversion of the latter part of the sub-section, if the plaintiff's contention should prevail. It would in my humble judgment afford a very strong illustration of the maxim, *Qui hæret in literâ hæret in cortice.*

I think the appeal should be dismissed with costs.

VAN KOUGHNET, C.—Setting aside any question as to exemption, it seems to me that the defendants still could not levy by distress. When a corporation leases their property, they are the parties to collect both rent and taxes, and when they lease for a certain sum, they can take no more; they cannot under the contract superadd taxes. The stipulation that they shall pay taxes gives, I think, only an action on the covenant, and, the mistake they have made here is in dis-