$45.750; building and plant, $653,000. It was admitted on the argument before the County Judge that, as to the latter sum, $153,000 was charged on buildings and plant and $500,000 on gas mains under the public streets, and there was no dispute as to the assessment except as to these mains. It was agreed that the buildings and plant instead of being placed at $15,3000, as specified, should be increased by adding to the buildings and plant $64,950, making the total valuation of the building and plant $217,950.

Mulock, Q.C., and *W. N. Miller*, Q.C., for the appeal.

Caswell for the City of Toronto.

The facts and arguments fully appear in the judgment of

McDOUGALL, Co.J.: I have had much difficulty in arriving at a satisfactory conclusion in this case. The mains of the Gas Company are undoubtedly part of their plant and machinery fixed to the land; and to the extent that these mains extend under the soil and land actually owned by the company are land both at common law and under s-s. 9 of s. 2 of the Assessment Act. These mains extend beyond the boundaries of the company's own lands, and into and under the highways and streets of the city; there is no break in their continuity; and they form, with the gas works, one indivisible set of plant necessary for the purpose of their business in order to enable them to convey the gas to their customers.

The particular assessment appealed from has been made at the principal place of business of the company, where the manufacturing of gas is conducted; the estimated value of these mains, $500,000, has been added to the value of the fixed machinery located on the company's own lands; and the whole assessment so levied has been laid upon the land, buildings, plant, and machinery of the company at Parliament street.

This is not an assessment in name, at any rate, upon the portions of the highways occupied by the mains themselves; and there is no legal difficulty that I can discern in levying and collecting the taxes based upon the whole assessment. A warrant directed against the company's property to realize the taxes could be executed upon the company's premises, and, in case a sale should become necessary, their lands, buildings, plant, and machinery could be sold. Under such a sale the treasurer's deed of the whole property would no doubt pass to the purchaser the gas works and the fixed machinery, and would include the mains as part of the general plant.

In the United States the mains and interest of gas companies in public streets have been held assessable as machinery, as being included in and forming an indivisible part of their plant or machinery fixed at its source to the buildings and lands actually owned by the company; and the part of the plant underlying the streets was held to be assessable as appurtenant to the lots upon which their main works were situated: *Capital City* v. *Insurance Company*, 51 Iowa 31; *Fall River* v. *County Commissioners*, 125 Mass. 567. The word "machinery" was held to include the mains laid under the streets: *Commonwealth* v. *Lowell Gas Co.*, 12 Allen 75; see also *The People* v. *Commissioner of Taxe*, 82 New York 459; *Providence Gas Co.* v. *Thurber*, 2 R.I. 15; and *People* v. *Brooklyn Assessors*, 39 New York 81.

But turning to the English cases and our Assessment Act, the right of gas