

MACMAHON, J.]

[April 25.]

MARTIN v. SAMPSON.

Chattel mortgage—Affidavit of bona fides—Money not actually advanced at the time—Invalidity of mortgage.

A chattel mortgage perfectly regular in every other respect was duly executed and filed in the proper office, but the consideration money was not actually paid over until four days after the filing of it, nor was there any binding agreement at the time of the execution and filing between the parties that the money should be advanced. Consequently the affidavit of bona fides was not true.

Held, that the mortgage was invalid.

J. J. Scott, for the plaintiff.

H. Cassels, for the defendant, Sampson.

Waddell, for the defendant, Angus.

ASSESSMENT CASES.

IN RE HAMILTON GAS CO. AND THE CITY OF HAMILTON.

Consol. Assessment Act, 1892, sec. 1 (9) and sec. 34 (2)—Assessment of gas mains and gas meters.

Held, that the mains of a gas company laid under and along city streets, together with the portions of such streets occupied thereby (i.e., the soil displaced and that necessary for the support and protection of the mains) are assessable against the company as "land" under sec. 1 (9) of the "Consolidated Assessment Act, 1892," but that gas meters on the premises of the consumers of gas are personally of the company, and therefore exempt under sec. 34 (2) of that Act.

Consumers' Gas Co. v. City of Toronto, 31 C.L.J. 488, considered and followed.

[HAMILTON, Dec. 3rd, 1895, SNIDER, Co. J.]

This was an appeal by the Hamilton Gas Co. against an assessment of \$75,000 for the mains, and \$100,000 for that portion of soil of the streets occupied by these mains, and \$10,000 on meters placed and maintained by them on the premises of consumers.

Edward Martin, Q.C., for the appellants.

Frank MacKelcan, Q.C., for respondents.

SNIDER, Co. J.—I hold that the right to assess the company's mains is settled by the decision of the learned Chancellor in the *Consumers' Gas Co. v. City of Toronto*, 31 C. L. J. 488. It is sought now to assess these appellants \$100,000 for a certain portion of the subsoil of the street through which the mains run, as distinguished from and in addition to these mains. The city assessor has, he says, assessed the gas company for a stratum of sub-soil lying three feet below the surface of the street six feet in width, of indefinite or imaginary thickness, and 25 miles long, being the length of pipes laid down in the streets. He then turns this into acres, and as the average assessment per acre of the land in Hamilton is, he says, between \$4,000 and \$5,000 he places this value on the number of acres he has figured out and assessed at \$100,000.

The first question I have to determine is whether any of this subsoil of the streets is really of this company within the meaning of the Assessment Act.