

Mr. Robinson, Q.C.: This, my lords, is an application by the city of Toronto for leave to appeal from the judgment of the Supreme Court of Canada. The city of Toronto, in 1873, was authorized by statute to construct waterworks for the use of the city, under the superintendence of commissioners. These works were constructed, and, at a later period, by 40th Vict., cap. 39, they were transferred to the city of Toronto. All the powers of the commissioners as to the waterworks were transferred to the city. The works were constructed out of moneys borrowed by the city, to be repaid by the rates. In the city of Toronto there are a very large number of properties which take water, and which are exempt altogether from taxation. There is a very long list in the Assessment Act of buildings exempt from taxation; and it appears that the annual revenue derived by the waterworks from properties exempt from general taxation amounts to about \$137,000, and of this about \$2,000 is contributed by buildings belonging to the government of Canada. The other buildings are composed of educational institutions, and so on. [The learned counsel then read sections 1 and 12 of 35 Vict., cap. 79, Ont.] The city has never acted under section 12. I mean they have never compelled any one to pay for water unless they took it. They are also authorized to give a discount for prompt payment. The system upon which they have proceeded is, in some cases, by meter; in others by assessing a sum upon each house, charging so much to those who consume the water, and allowing a discount. But they have declined to allow this discount to those who are exempt from all other city taxation, on the ground that they have contributed nothing to the expense of building the waterworks, and it would be unreasonable therefore to give them the same advantage and to supply the water to them at the same price as they do to the others. The question is simply as to their right to do that. There is no question of fact in dispute.

The learned trial judge decided in favour of the city, saying that, in his view, this was not a tax, or in the nature of a tax. There were two contentions on the part of the defendants. In the first place they said: "All our property is exempt from taxation. This is a tax. When you charge us with this water you are taxing us, and, taxing us, you must tax us equally with all other people." In the next place they said: "Whether it is or is not a tax—when you are authorized to fix the price paid for water your prices must be equal to every one. That is a presumption to be applied and to be attached to the statute."

THE EARL OF SELBORNE: Is that the form the second point would take? I observe there is power to allow discount for prepayment. Would not the objection be that if discount were allowed it should be equal to all who would have to pay?

Mr. Robinson: That would be putting it in another form, but it would be the same thing. They contended that we must treat all people equally, both in what we charge them and in what we allow them by way of discount. Those were the two contentions on the part of the defendants. The learned trial judge said he did not regard this as a tax at all; he regarded it simply as a sale of goods by the city, for which they were entitled to charge such price as they might think reasonable, subject, of course, to the universal rule that all