

The question involved was the right to charge lessees of property of the University of Toronto on College street, in the city of Toronto, holding under leases in existence at the date of the agreement between the city corporation and the University, confirmed by and set out in a schedule to 52 Vict. ch. 53 (O.), with a part of the cost of local improvements on College street. McDougall, Co.J., held, affirming the finding of the Court of Revision, that the lessees were chargeable, mainly on the ground that by the agreement in question College street had been made a public highway of the city.

The case was heard by OSLER, MACLENNAN, GARROW, J.J.A.

J. A. Paterson, K.C., for the lessee.

J. S. Fullerton, K.C., and A. F. Lobb, for the city corporation.

OSLER, J.A. (after setting out the facts at length):—

The question submitted to the Court is whether, in view of the deeds, documents, agreements, and statutes referred to, the said Leach or his interest in the property of the Crown so leased to him, is liable for local rates for the sidewalk in question; or whether the corporation of the city of Toronto is liable, under its covenants and agreements with the Crown, to maintain the sidewalks upon the said street in proper order at the expense of the city of Toronto, and so as to free the said Leach therefrom as a local improvement.

The main argument for the appellant proceeded, I think, upon a misconception of his position in relation to the lease to the city of 1859. He seems to have considered that, as a subsequent lessee of the Crown of lands fronting on the avenues, he had some right or interest in maintaining the conditions created by the earlier lease in respect of the city's obligation to keep the avenues in repair. I think this is a mistake. The appellant had, as lessee of the Crown, a right of access to and from the front of his premises. Of that he could not be deprived, and the city had covenanted with his lessor that he should be permitted to enjoy it. He had no right, as against the city, to compel them to keep the avenues in repair. The Crown had rights in that respect under the city's covenant, but these were rights which it might have released or refused to enforce, and they would come to an end with the forfeiture of the lease.

Short of interfering with his right of access, there was nothing in the situation of all three parties to prevent the