G. G. McPherson, K.C., for the defendant companies.

R. S. Robertson, for the defendant city corporation.

T. J. W. O'Connor and J. C. Makins, for the plaintiff.

GARROW, J.A., said that the matter was purely one of construction. And the words to be construed were "the said companies are to be given exemption from taxation." And the question is, do these words include exemption from school taxes, as well as from the ordinary municipal taxation. . . .

[Reference to City of Winnipeg v. Canadian Pacific R. W. Co., 12 Man. L. R. 581; Canadian Pacific R. W. Co. v. City of Winnipeg, 30 S. C. R. 558; and distinction pointed out.]

In view of the express prohibition against exemption from school taxes contained in 55 Vict. ch. 42, sec. 366, a prohibition contained in all subsequent statutes, it is of minor importance to come to a definite conclusion as to what the law was prior to the date of that enactment. And indeed its only importance is to assist, if it will, however slightly, to a proper understanding of what it was that the legislature probably intended to sanction when it validated the agreements, etc., in question. The longest term for which exemption could have been granted was, under our statutes, 10 years. The consent of the legislature was, therefore, necessary to extend this term to the 20 years agreed upon between the parties. If the same language had been used in a by-law within the competence of the council, i.e., for a term of 10 years, it must have meant "exclusive of school taxes." And in a by-law for a term of 20 years, which the statute has validated, it must, in my opinion, receive the same construction, unless we can clearly gather an intention on the part of the legislature, not merely to allow the extended term, but also a withdrawal of the express statutory prohibition against exempting from school taxes, which, if not always the law, as, in my opinion, it was, has been at least the declared legislative policy ever since 1892; and of any such intention I am unable to see a particle. . . .

But, while thus agreeing with MacMahon, J., upon the main contention, I incline to think that the proper measure of relief is, under all the circumstances, a declaration applicable to the future only. . . .

It was contended before us that the plaintiff's proper remedy was by an appeal to the Court of Revision. Such an appeal might, no doubt, have been taken by him or by any other ratepayer. But that, I think, was not his only remedy. He had also, I think, a right as a ratepayer to obtain a declaration in the ordinary