LEGAL DEPARTMENT.

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LEGAL DECISIONS.

Consumers' Gas Co. of Toronto vs. City of Toronto.

Assessment and Taxes—Toronto Gas Company—Mains and Pipes—Exemptions—Real Property—Chattels—Fixtures—Highways—Title to Portion of Highway—Legislative Grant of Soil in Highway—11 V. C. 14—55, V. C. 48—Ontario Assessment Act, 1892.

Gas pipes laid under the streets of a city which are the property of a private corporation are real estate within the meaning of the Ontario Assessment Act, 1892, and liable to assessment as such, as they do not fall within the exemptions mentioned in section 6 of the Act.

The appellants were incorporated by an act of the late Parlaiment of Canada, 11 V. C. 14, by the first clause of which power was conferred "to purchase, take, and hold lands, tenements, and other real property for the purposes of the said company, and for the erection and construction and convenient use of the gas works" of the company; and further power was conferred by the thirteenth clause, "to break, dig, and trench so much and so many of be streets, squares, and public places of the said city of Toronto as may at any time be necessary for the laying down of the mains and pipes to conduct the gas from the works of the said company to the consumers thereof, or for taking up, renewing, altering, or repairing the same when the said company shall deem it expedient.

Held, that these enactments operated as a legislative grant to the company of so much of the lands of the streets, squares, and public places of the city and below the surface as it might be found necessary to take and hold for the purposes of the company, and for the convenient use of the gas works; and when openings were made at the places designated by the city surveyor, as provided in the charter, and they were placed there, the soil they occupied was land taken and held by the company under the provisions of the act of incorporation; and the proper method of assessment of the pipes so laid and fixed in the soil of the streets and public places in a city ought to be as in the case of real estate and land generally and separately in the respective wards of the city in which they may be actually laid.

Judgment of the court below, 23 A.R. 551, 16 Occ. N. 282, affirmed.

The foregoing decision of the Supreme Court of Canada turned upon the meaning of subsection 2 of section 34 of the Consolidated Assessment Act which is as follows: The personal property of an incorporated company other than the companies mentioned in sub-section 2 of this section, shall be assessed against the company in the same manner as if the company were an unincorporated company or partnership.

(2) The personal property of a bank or of a company which invests the whole or the principal part of its means in gas works, water works, plank or gravel roads, railway and tramroads, harbors or other works requiring the investment of the whole or principal part of its means in real estate, shall as hitherto, be exempt from assessment; but the shareholders shall be assessed on the income derived from such companies. R. S. O. 1887, C. 193, section 34.

The question for the decision of the Court was whether the gas pipes laid under the street were real estate or personal property. If personal property they were exempt but if they were real property they were taxable. The question came before several county councils and the majority of them held that gas pipes were personal property and exempt and several gas companies through the Province escaped taxation. Now the Supreme Court has decided that gas pipes are real estate and assessors should assess them as such. It will also be observed that instead of assessing the whole in the ward where the works are situated the assessment ought to be separate for each ward.

Broughton vs. Townships of Grey and Elma.

Municipal Corporations—Drainage By-Laws—Initiating and Contributing Townships.

Where the council of a municipality assumed to pass a by-law under section 585 of the Consolidated Municipal Act of Ontario, 55 V., chap. 42, for the construction, maintenance and repair of drainage works, and thereby to charge and assess lands in an adjoining municipality for benefit as for outlet in order to raise the funds necessary to meet the costs of such works:

Held, reversing the judgment of the Court of Appeal for Ontario, 23 A R., 601; 16 Occ. N., 281, and of a Divisional Court, 26 O. R., 694; 15 Occ. N., 292, that as the drain only emptied into a natural stream extending into the adjoining municipality the lands in such adjoining municipality purported to be affected by such by-law were not assessable for a liability thereunder to contribute toward the cost of the works, and so far as they were concerned the by-law was *ultra vires* of the initiating municipal corporation, and that a person whose lands might appear to be affected thereby, or by any by-law of the adjoining municipality proposing to levy contributions toward the cost of such works, would be entitled to have the adjoining municipality restrained from passing a contributory by-law, or taking any steps towards that end, by an action brought before the passing of such contributory by-law.

Reg. ex rel. Ferris vs. Speck.

Judgment on appeal by the relator from order of Judge of County Court of Welland dismissing motion to void the election of the respondent as a councillor for the village of Niagara Falls for alleged want of property qualification. The respondent was duly rated upon the proper assessment roll as tenant of land assessed thereon for $800, which land, with other land owned by the same landlord, which it was admitted was of the value of at least $1,100, was encumbered by a mortgage of $800, having priority to the respondent's lease. The question turned upon the meaning of section 73 of the Consolidated Municipal Act, 1892, which requires, as far as applicable to this case, that a person to be qualified to be elected must have at the time of the election, as proprietor or tenant, a legal or equitable freehold or leasehold, rated in his own name on the last revised assessment roll of the municipality, to at least the value thereafter mentioned over and above all charges, liens and encumbrances affecting the same, such value being in the case of councillors of incorporated villages, freehold $200 or leasehold $400. The County Court Judge was of opinion that the mortgage was not to be taken into account in ascertaining the value of the respondent's leasehold, as it was not a charge, lien or encumbrance affecting it, within the meaning of section 73; and the learned Chief Justice is unable to say that this view is not the correct one. What was meant was that the leasehold interest itself should be the subject of the encumbrance where the qualifying property is a leasehold interest; that is to say, an encumbrance created by the owner of the leasehold interest, or operating upon it *qua* leasehold. Held also, that the mortgage debt should be apportioned according to the respective values of the two properties included in it if the encumbrance were one within the provisions of section 73. See Moore vs. Overseers of Parish of Carlisbrooke, 12 C.B., 661; Barrow vs. Buckmaster, ib.,664. Appeal dismissed with costs. W. M. Douglas for the relator. DuVernet for the respondent.

"You old plug," said the farmer to his balky horse, "you actually ain't worth killin'— unless," he added, after second thought, "unless I could manage to git you killed by the railroad."

The Wife—Doctor, can you do anything for my husband? The Doctor—What seems to be the trouble? "Worrying about money." "Oh, I can relieve him of that, all right."—*Yonkers Statesman.*

The McNab treated the family to a fantasia upon the bagpipes, and when he had concluded he looked around with honest pride and remarked: "Eh, mon, but that's vara deefficult!" "Is it?" said the O'Flaherty. "Be jabers," Oi wish it had been impossible."