

ways. There is not a word in the only enactment upon which the company rely—29 Vict. ch. 88 (1865), the company's Act of incorporation—which confers any right except in connection with a highway.

The power conferred upon the municipal council is, to stop up any highway or part of a highway and lease or sell the soil and freehold of it—the Municipal Act, R.S.O. 1914 ch. 192, sec. 472 (1) (c)—and that is quite consistent with the power conferred upon the gas company.

When a new highway is opened, under the power conferred on municipal councils to establish and lay out highways, or otherwise, the company's power extends to them, as their needs and interests also do; and, when a municipal council, under its powers, closes a highway, the company's powers there end, as do their needs and interests generally in regard to it also.

The closing of a highway having gas-pipes in it is not an every day occurrence; it seems to have been unheard of before. Gas-mains are laid in the occupied highway, and the occupied highway is seldom closed.

Whether the gas-pipes are or are not part of the soil is not the question. The logical and determining question is, for how long? And in this case that which seems to be the obvious answer is, as long as the highway lasts.

There is no right to compensation; the gas company are deprived of nothing, and no injurious effect is caused to any of their legal rights. Their rights in the highway end when the highway's existence ends.

The appeal should be allowed and the award set aside, and the appellants' costs throughout should be paid by the respondents.

RIDDELL, J., was also of opinion, for reasons stated in writing, that the gas company were not entitled to compensation.

BRITTON and MIDDLETON, JJ., agreed in the result.

*Appeal allowed.*