

poor, it being held that the companies were the occupants of the land on which the pipes were laid.

The appellants cited (among others) the case of the *Chelsea Water Works v. Bowley*, 17 Q.B. 358, in which the pipes of a waterworks company were held to be not assessable for land tax under the statute 34 Geo. III., cap. 5, by which all lands and tenements and all hereditaments are charged with land tax, and contended that this case was applicable to the present rather than those cited for the city, as, under our Assessment Act, land itself is assessable, and not the occupiers.

It is quite clear that personal property of appellants is exempt from taxation under Con. Asst. Act of 1892, s. 34, s-s. 2, and unless these mains are real estate they cannot be assessed.

In the case of *Toronto Street Railway v. Fleming*, 37 U.C.R. 118, our Court of Appeal held that the rails and sleepers of the Toronto Street Railway were not assessable as land, and that the cases cited by the city solicitor were not applicable, but that *Chelsea v. Bowley* was, the statute under which it was decided being more analogous to our own. In the judgment of BURTON, J., all these cases and many others were dealt with, and the distinction between the assessment of occupiers of land and of land itself clearly pointed out.

The case of *Chelsea v. Bowley* has been sometimes criticized as not consistent with some of the other cases. In the very recent case of *Metropolitan Railway Company v. Fowler*, L.R.A.C., 1893, in the House of Lords, *Chelsea v. Bowley* was attacked, but it was said by the Lord Chancellor that if the facts found by the court in that case were correctly found, viz., that the company had only an easement, the decision was right, and an easement was not assessable.

Reference was also made by the city solicitor to the fact that by the Assessment Act, s. 7, it is enacted that "all property" in the province shall be liable to taxation, subject to certain exemptions, whereas in former Acts the words were "all the land and personal property"; and it was suggested that the change was occasioned by some remarks of PATTERSON, J., in *Toronto Street Railway Company v. Fleming*, at page 127, where he says: "If there was a general law that all property should be assessable for municipal purposes, I should have no hesitation in deciding that this was assessable property. The question, however, is: Is it assessable as land?" and he then points out that public roads are exempt.

Although this change is made, I cannot find any change in the meaning given to "property," "land," "real property," and "real estate," in the interpretation clauses of the Act; and if anything is now assessable that was not before the change was made, it must be dealt with as "personal estate," or "personal property," as these terms include "goods, chattels, etc., and all other property except land and real estate and real property as above defined, and except property herein expressly exempted." (Sec. 2, s-s. 10.)

In my opinion, these mains are chattels which the appellants are allowed to place upon the streets, or at most an easement, and in either view are not assessable as land. I therefore reduce the assessment to \$34,000.

For the justice of this decision, I may refer to the closing remarks of MR. JUSTICE BURTON in *Fleming v. Toronto Street Railway Company* at p. 125, showing that under any other construction there would be a double assessment, the dividends or earnings of the appellants being clearly assessable.