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CURRENT TOPICS AND CASES.

Mr. Justice Church, whose resignation has been caused by ill-health, was appointed a judge of the Court of Queen's Bench just five years ago, to fill the place of the late Mr. Justice Ramsay. His term of office, brief as it has been, was greatly encroached upon by ill-health. After several interruptions of work caused by sickness, the learned judge was attacked two years ago by the prevailing influenza, and although he was able for a short time to resume his duties, the effort apparently proved too much for him. It is to be regretted that what bid fair to be a useful and satisfactory judicial career has been brought prematurely to an end.

Mr. Justice Church's successor is Mr. Robert Newton Hall, Q. C., of Sherbrooke. Mr. Hall was admitted to the bar in 1861. The firm of which he was the head, has long occupied a leading position at Sherbrooke. Mr. Hall himself has not appeared much in Court in recent years, but he is known in parliamentary and legal circles as an advocate of unusual ability, and there is reason to expect that he will win favor as a judge. Sherbrooke, it may be remarked, some years ago contributed a very

able member to the Court of Appeal in Judge Sanborn, whose decease was a great loss to the bench.

The January term of the Court of Appeal at Montreal opened with 118 cases on the printed list. This is apparently an increase of 32 cases over the January list of last year, when there were 86 cases inscribed. It is to be observed, however, that the change in procedure, effected by 54 Vict. c. 48, has led to the appearance of a good many cases on the paper which would not have been placed on it so soon under the old system. The list is formidable enough, and the fact that it still contains a few cases which are to be found on the list for January, 1891, shows the extent of the arrears. It is a curious fact, in the face of this long calendar, that the Court was obliged to adjourn on the 15th instant without hearing a single case, for the reason that there was not one in which the parties were prepared to go on. Of course, this happened because there was something which necessitated the postponement of the first case or two, and those who were lower down were not on hand to step into the vacant place. The same thing occurs constantly in every court in the world. A special term of the Court is to be held at Montreal, beginning Feb. 17.

SUPREME COURT OF CANADA.

Manitoba.]

LYNCH v. NORTH WEST CANADA LAND CO.

MUNICIPALITY OF SOUTH DUFFERIN v. MORDEN.

GIBBINS v. BARBER.

Constitutional law—B. N. A. Act, sec. 91—Interest—Legislative authority over—Municipal Act—Taxation—Additional rate for non-payment.

The Municipal Act of Manitoba (1886) sec. 626, as amended by 49 Vict. c. 52, provides that "in cities and towns all parties paying taxes to the treasurer or collector before the 1st day of December, and in rural muncipalities before the 31st day

of December, in the year they are levied, shall be entitled to a reduction of 10 per cent. on the same, and all taxes remaining due and unpaid on the 1st or 31st day of December (as the case may be), shall be payable at par until the 1st day of March following, at which time a list of all the taxes remaining unpaid and due shall be prepared by the Treasurer or Collector (as the case may be), and the sum of 10 per cent. on the original amount shall be added on all taxes then remaining unpaid."

Held, reversing the judgment of the Court below, Gwynne, J., dissenting, that the addition of 10 per cent. on taxes unpaid on March 1st is only an additional rate or tax imposed as a penalty for default, and is not "interest" within the meaning of sec. 91 of the B. N. A. Act, and so within the exclusive legislative authority of the Dominion Parliament. *Ross* v. *Torrance* (2 Leg. News, 186) overruled.

Appeal allowed with costs.

SOUTH DUFFERIN v. MORDEN.

Martin, Attorney General, for appellants.

McTavish, *Q.C.*, for respondent.

LYNCH v. NORTH WEST LAND CO.

Kennedy, *Q.C.*, for appellant.

Robinson, *Q.C.*, and *Tupper*, *Q.C.*, for respondents.

GIBBINS v. BARBER.

Tupper, *Q.C.*, for respondent.

Ontario.]

BRANTFORD, WATERLOO & LAKE ERIE RY. CO. v. HUFFMAN.

Contract — Tender for — Acceptance—Bond — Condition of—Consideration.

H., in response to advertisement therefor, tendered for a contract to build a line of railway, and his tender was accepted by the board of directors of the railway company subject to his furnishing satisfactory sureties for the performance of the work and depositing in the Bank of Montreal a sum equal to 5 per cent. of the amount of his tender. H. subsequently executed a bond in favour of the Railway company, which, after reciting the fact of the tender and acceptance, contained the condition that if within four days of the date of execution H. should furnish the said sureties and deposit the said amount the bond should be void. These conditions were not carried out and the contract was eventually given to another person. In an action against H. on the bond,

Held, affirming the decision of the Court of Appeal (18 Ont. App. R. 415), that no contract having been entered into pursuant to the tender and acceptance, the bond was only an agreement for which there was no consideration, and H. was not liable on it.

Appeal dismissed with costs.

Lash, Q.C., and *Wilson, Q.C.*, for appellants.

Osler, Q.C., and *Harley* for respondent.

Ontario.]

HOWARD v. O'DONOHUE.

Statute of Limitations—Possession—Caretaker—Acts of ownership.

F. H. was the acting owner of certain real estate for some years prior to 1865, and O. was in possession under him as caretaker. In 1865, in a suit between F. H. and other members of his family, a decree was made declaring F. H. to hold as trustee for, and to convey certain proportions of the property to, the other members. O. continued in possession after this decree, and took proceedings at different times against trespassers and others, but always represented that he did so by authority from F. H., and he did no act as asserting ownership in himself until 1884, when he fenced a portion of the land. In an action against O. to recover possession of the land,

Held, reversing the judgment of the Court of Appeal (18 Ont. App. R. 529), that the effect of the decree in 1865 was not to alter the relations between F. H. and O.; that O. having once entered as caretaker, and having never disclaimed that he held as such for the necessary period to gain a title by possession, his possession continued to be that of a caretaker and he could not retain possession of the land against the true owners. *Ryan* v. *Ryan* (5 Can. S. C. R. 387) followed.

Appeal allowed with costs.

McCarthy, Q.C., and *MacMurchy* for appellants.

Reeve, Q.C., for respondent.

Ontario.]

O'DONOHOE v. BEATTY.

Solicitor—Bill of costs—Proceedings before taxing officer—Evidence of settlement—Appeal.

The executors of an estate took proceedings to obtain from a solicitor of the testator an account and payment of monies in his hands due the estate. A reference was made to a taxing officer

to tax the bills of costs produced by the solicitor, and in doing so the officer, subject to protest by the solicitor, took evidence of an alleged settlement between the executors and the solicitor, by which a fixed amount was to be paid the latter in full of all claims. The officer having reported a considerable amount due from the solicitor to the estate the solicitor appealed, urging that the order of reference did not authorise the officer to do more than tax the bills, and in doing so, as they had been rendered more than a year before the proceedings commenced, they should be taxed at the amount represented on their face. The officer's report was affirmed by the Divisional Court and the Court of Appeal.

Held, affirming the decision of the Court of Appeal, that the taxing officer not only could but was bound to proceed as he did, and the appeal should be dismissed.

Quære: As the matter in question relates only to the practice and procedure of the High Court of Justice in Ontario, and the conduct of one of its officers in carrying out an order of the court, is it a proper subject of appeal to the Supreme Court of Canada?

Appeal dismissed with costs.

O'Donohoe appellant in person.

McCarthy, Q.C., for respondent.

Ontario.]

BICKFORD v. HAWKINS.

Appeal—Questions of fact—Interference with decision of trial judge.

In an action for payment of services alleged to be performed by H., on a retainer by B., to procure a subsidy from Parliament and bonuses from Municipalities of Sarnia and Sombra in aid of a railway projected by B., the giving of which retainer B. denied,

Held, that the question for decision being entirely one of fact, the decision of the trial Judge, who saw and heard the witnesses, in favour of H., confirmed as it was by the Court of Appeal, should not be interfered with by the Supreme Court.

Appeal dismissed with costs.

Lash, Q. C., for appellant.

McCarthy, Q. C., and *Wilson, Q. C.*, for respondent.

CIRCUIT COURT—DISTRICT OF ST. FRANCIS.

SHERBROOKE, Dec. 23, 1891.

Before TAIT, J.

SHERBROOKE GAS & WATER Co., appellant, and CORPORATION OF THE CITY OF SHERBROOKE, respondent.

Immovable—Gas and water pipes.

HELD:—*That pipes and mains laid throughout the streets of a city by a gas and water company, under the authority of an Act of the legislature, for the purpose of supplying gas and water to the inhabitants of the city, form part of the realty of the company and are taxable as real estate.*

TAIT, J.—This is an appeal from a decision of the municipal council of the city of Sherbrooke, homologating the valuation roll of said city for the present year, in which, in pursuance of two resolutions passed by the said council previous to such homologation, the valuations previously placed on two parcels of land belonging to appellants, one known as part of official lot 1239 in the South ward, and the other as part of official lot 571 of the North ward of said city, were increased from $6,000 and $8,000 to $36,000 and $78,000 respectively. The Gas works of appellants are erected on the first mentioned lot and the Water works on the other. The resolutions show, and it is admitted, that the $30,000 increase represents the value of the gas mains and pipes, while the increase of $70,000 represents the value put upon the water mains and pipes running through the streets of the city. The pretention of the appellants is that the gas mains and pipes are not placed upon lot 1239, nor the water mains and pipes upon lot 571; that they form no part of these respective lots, but have been placed throughout the streets of the city by the special permission and authority of the Legislature of this province for the purpose of supplying gas and water to the inhabitants of the city, and that they form no part of the real estate of the city, and are not taxable property. It is also said that the council arbitrarily valued these mains and pipes without any notice to the appellants, and without any action ever having been taken by the council or by the valuators to ascertain the value thereof.

The respondents deny the truth of the allegations set forth in the *moyens* of appeal, and, further, say that the gas mains and pipes and water mains and pipes which run through said streets, respectively attached to the gas and water works of appellants,

are taxable property, and are part and portion of the machinery connected with the working of said works, and form part and portion of the realty.

The grounds of objection to the increased valuation, based upon want of notice to appellants and failure of respondents or their valuators to ascertain the value of the mains and pipes, cannot, I think, be sustained. The public notice required by law was given on the 7th of August, 1891, of the deposit of the roll, and that the council would proceed on the 24th August to the examination and revision thereof. On that day a petition was presented by certain ratepayers, asking that the valuation of the property of the appellants be increased at least $100,000. Meetings were held on the 26th and 28th, and on the latter occasion the valuators made a report referring to the value of the appellants' mains and pipes laid in the streets. Another meeting was held on the 31st, and then on the 4th September the resolutions objected to were passed and the roll was declared established and promulgated. Although this petition to increase appellants' valuation was before the council, as well as this report of valuation, no one appeared to represent the company. Mr. Griffith, secretary-treasurer of the city, says he verbally notified the appellants' secretary-treasurer on the 4th that the matter was coming up before the council that evening. This informal notice was going beyond the actual requirements of the law. It is perhaps true that in a matter of so much importance the council might perhaps have gone beyond this, and have sent in a more formal notice of the presentation of the petition and of the intention of the council to consider it, but I cannot say there was any legal obligation upon them to do so.

In arriving at the valuation of the mains and pipes the valuators and council appear to have been guided, to a considerable extent, by a report made in 1884 by Mr. Lesage, superintendent of the Montreal water works, upon the value of the appellants' water and gas works at that time. Of course, as this valuation had been made so many years ago, it only served as a basis or starting point for the present valuation. The valuators using it for that purpose and having certain other information, and exercising their own judgment, arrived at the conclusion that $150,000 would be a low valuation for appellants' property and plant. The council, however, put the whole valuation at $114,000—$36,000 upon the gas property and $78,000 upon the water property. I did not hear any evidence that would justify me in

saying that these valuations were made in bad faith or that they are erroneous, and I think they must be considered correct.

I therefore proceed to the consideration of the main question, whether the gas and water mains and pipes are taxable at all. This question has been argued with great ability by the learned counsel, and at first sight appeared to me to be one of considerable difficulty. The city is authorised by its charter (section 30) to levy taxes on all lands, city lots and parts of city lots, whether there be buildings erected thereon or not, with all buildings and erections thereon, a sum not exceeding two cents on the dollar on their whole value, as entered on the assessment roll of said city. By section 48 the provisions of the municipal code, when not inconsistent with the act of incorporation, apply to the city corporation, and whenever the latter is silent all the provisions of the code apply and are the law in relation to all municipal matters in said city. Article 719 of the code enacts that the actual value of the taxable real estate includes the value of all buildings, factories or machine shops erected thereon, and of any improvements which have been made thereto, save in so far as is set forth in the two following articles which refer to railway companies. This does not appear to me to add much to the words of the charter, which permits the levying of taxes on lands and all buildings and erections thereon. All property is either moveable or immoveable. The tax in question purports to be laid upon immoveables, the value of the gas and water mains and pipes having been included in the value of the lands and buildings. The question now to be decided is whether they really are part thereof, and liable to taxation as immovables. Art. 375 to 382 C. C., inclusive, deal with immoveables. We are told there are four kinds of immoveable property, and examples are given which are necessarily incomplete. These mains and pipes must be either immoveable by nature or by destination. Land and buildings and certain other things are mentioned as immoveable by their nature in articles 376, 377 and 378. Then art. 379 says: "Moveable things, which a proprietor has placed on his real pro- "perty for a permanency, or which he has incorporated therewith, "are immoveable by their destination so long as they remain "there. Thus within these restrictions, the following and like "objects are immoveable": Then follows a list, but of course it is not limitative. This is clear from the language of the article and the report of the commission who formally declare the enumeration incomplete, and all the commentators on the cor-

responding article of the Code Napoleon so speak of that article. The principles embodied in these articles extend, in their practical application, much further than one would imagine by casually reading them. A few citations from some of the leading authors will show this. Aubry & Rau, speaking of the immoveables by nature, says "Toutefois, comme la propriété du sol emporte celle " du dessus et du dessous, la loi range dans la classe des immeubles " par nature, en les opposant aux immeubles par destination, " tous les objets unis ou incorporés au sol. Tels sont les édifices " élevés au-dessus du sol, ainsi que les constructions faites au- " dessous, *et tout ce qui en forme partie intégrante.*" While Demolombe (vol. 9, No. 103), speaking of what is comprised in the word " bâtiments," used in art. 518, C. N., corresponding with the word " buildings" in our article 376, says: " Il faut comprendre, " sous cette denomination de *bâtiments*, employée par l'article 518, " toutes constructions, tous travaux ou ouvrages quelconques, " superficiaires ou souterrains, quelles qu'en soient la matière, la " forme et la destination, dès que ces ouvrages sont incorporés " dans le sol, et en constituent une parte intégrante." Then again at No. 196 he says: " Parmi les éléments, en effet, qui " composent le *bâtiment*, il en est deux sortes: Les uns, qui sont " ses éléments intrinsèques, essentiels, constitutifs; ceux-là, ils " sont immeubles par leur nature, *pars ædium*, c'est le bâtiment " lui-même. Les autres, qui ne forment pas une partie aussi es- " sentiellement intégrante du corps même de l'édifice, *non pars* " *ædium*, mais qui sont néanmoins placés là comme des dépen- " dances à perpétuelle demeure de l'édifice, *propter ædes, perpetui* " *usus causa.*"

Then as to immoveables by destination, Aubry & Rau define them as "les objets mobiliers que la loi répute immeubles à " raison de l'usage auquel ils ont été affectés par le propriétaire " d'un fonds de terre ou d'un bâtiment, dont ils ne font cependant " pas partie intégrante." Prudhon (vol. 1, No. 102) as "les choses qui, quoique mobilières en elles-memes, prennent civilement la qualité d'immeubles, en tant, qu'elles sont considérées, dans le droit, comme accessoires des fonds de terre ou des bâtimens auxquels elles ont été attachées, ou au service desquels elles se trouvent affectées par le propriétaire."

Mr. Demolombe (vol. 9, No. 200) says:—" Les immeubles, en " effet, tout seuls, et si j'osais dire *tout nus*, ne pourraient évidem- " ment pas nous rendre les services que nous leur demandons, " dans la société où nous vivons, dans l'état de nos moeurs et de

" nos habitudes agricoles, commerciales et industrielles, Il faut " donc les garnir, les revêtir de certains objets mobiliers qui sont " indispensables pour que leur destination s'accomplisse; pour " que ce sol produise des récoltes, pour que cette usine fonctionne, pour que cette maison soit habitable; et il est en conséquence très rationnel de considérer ces objets mobiliers comme des accessoires de l'immeuble, puisque, en effet, l'immeuble, " sans eux, se trouverait tout à fait incomplet et insuffisant, et " qu'il ne pouvait pas remplir la fonction qui lui est assignée " dans l'ordre de nos besoins." And in No. 258 he says:

" Ce qui concerne cette immobilisation industrielle peut se résumer en deux propositions: 1. Il faut qu'il existe un bien " immeuble par sa nature, qui soit le siége ou plutôt le principal " moyen et l'instrument essentiel de l'industrie; 2. Lorsque cette " première condition se rencontre, il faut, pour que des meubles " y deviennent immeubles par destination, que ces meubles soient " les agents directs et nécessaires de l'exploitation de l'immeuble " lui-même." In another place at No. 260 he calls the immoveables by destination the muscles and arms of the *fonds* itself.

With regard to immoveables by nature it has been decided in France that buildings erected on land forming part of the public domain under permission of the Government, are immovable, even though this permission is revocable, and can be hypothecated and seized as such, subject to the *condition résolutoire* in the event of the permission being revoked. (Gilbert, art. 518, No. 15.) Also that a railway established by the owner of a quarry for the working thereof, part on his own land and part on land leased by him for that purpose, is immoveable by nature even as to the latter part, and is all comprised, as a whole, in the seizure of the quarry, (idem, No. 19), and that a boat exclusively intended for the use(*au passage*) of the inmates of a house situated on the bank of a river is immoveable by destination (9 Dem. No. 318), and also " que les rondelles on tonnes destinées à transporter les " bières chez les consommateurs étaient dans l'arrondissement de " Lille, des ustensiles nécessaires au service et à l'exploitation des " brasseries et comme tels au nombre des objets mobiliers que " l'art. 524 C. Civ. déclare immeubles par destination," (Cassation, Sirey 1817—1—359). To distinguish what is immovable by nature from what is immovable by destination is sometimes a task of difficulty. As an example of this I may refer to art. 523 of the Code Napoleon. It is as follows: " Les tuyaux servant à " la conduite des eaux dans une maison ou autre héritage, sont

" immeubles et font partie du fonds auquel ils sont attachés." The authors are divided as to whether these pipes should be regarded as immovable by nature or by destination (5, Dem. No. 149). Our codifiers did not frame a special article corresponding with art. 523 C.N. I should conclude that they must have considered that these pipes would fall under the general principles laid down in the articles they have given us respecting immoveables, and that a special article was therefore unnecessary. Mr. Laurent (vol. 5, No. 409) is one of the authors who profess the opinion that these pipes are immoveable by nature, and for the reason that they are an accessory of the building just as much as the doors and windows. He gives us the explanation respecting this article, made by the speaker for the government at its introduction, as follows: " Il est des objets immeubles par leur nature, " comme les fonds de terre, les bâtimens. On ne peut pas se " méprendre sur leur qualité, elle est sensible. On ne peut pas " d'avantage méconnaitre la qualité d'immeubles dans les usines " qui font partie d'un bâtiment, dans les *tuyaux* qui y conduisent " des eaux et dans d'autres objets de la meme espèce qui *s'identi-* " *fient avec l'immeuble* et ne font qu'un seul tout avec lui."

Mr. Brown referred me to the commentary of Mr. Prudhon (vol. 1, No. 141), when commenting on art. 523, C. N., above cited, and especially on the words "auquel ils sont attachés," he says:—" C'est à dire dans lequel ou pour le service duquel ils " conduisent les eaux; et ci cette conduite a lieu *à travers un* " *héritage étranger*, ceux des tuyaux qui reposent sur *cet héritage* " *font également partie de l'immeuble dans lequel les eaux sont diri-* " *gées, parce que la servitude avec ses accessoires appartient au fonds* " *pour l'usage duquel elle est constituée.*"

The principle here laid down is that pipes which conduct water into a house, over the land of another, by right of a servitude, are immovable even where they cross such land, and form part of the immovable to which they carry the water.

Mr. White suggested that this citation from Prudhon did not apply, because it did not refer to a commercial corporation laying pipes in the public streets under permission granted by a special act of the Legislature. I am unable to agree with that view. By their act of incorporation the appellants were granted the right to supply water and gas to the inhabitants of the city of Sherbrooke and neighboring municipalities, and were authorized to open the streets and use them to lay therein their mains and pipes to conduct the water and gas to the consumers within the

limits mentioned in the act, and to pass over the property of some proprietors in order to lay their pipes to the property of others, and to break up and uplift all passages common to neighbouring proprietors or tenants and to dig trenches therein for the purpose of laying down pipes, with power to lift and repair them, and in fact a servitude has been created in their favor over all property belonging to the city and others required by them to lay mains and pipes and to keep them in repair. No person can interfere with this right. It is, of course, indisputable that these pipes are absolutely necessary to enable the appellants to carry out the object of their incorporation. From my examination of the articles of the code and of the commentators, I am led to the conclusion that the mains and pipes in question are immovables, and apart from the opinion of the authors, common sense seems to tell us that these mains and pipes are but the limbs of the body and a part of it. I do not know that it is necessary that I should decide whether they are immovables by nature as being an integral part of the *fonds*, or immovables by destination as being accessory to the *fonds*, incorporated with it, and essentially necessary to the operation of the works (*fonds*) to which they are attached and *affectées* by the proprietors. I have not overlooked Mr. White's argument, drawn from the wording of Art. 379 C. C., that these mains and pipes cannot be immovable by destination because they are not placed by the appellants on their own land. It is true that the appellants are not proprietors of the streets, but they have real rights therein; they have been given the *domaine utile* thereof, and are practically proprietors for all the purposes of carrying out the objects of their incorporation. The view I take that these mains and pipes are immovables is sustained by judgments both in this province and in France. I have found an *arrêt* of the Court of Appeal in France reported in Dalloz' Jurisprudence Générale, 1887, part 2, p. 81. Certain gas works (*usine à gaz*) were seized by a creditor, who asked to have them sold with all their dependencies as well as the immovables by destination forming part of the "usine." This demand was contested by the *syndic* of the estate. The holding was that the pipes laid under the public streets to conduct the gas to the consumers, formed part of the immovables as much as the *usine* itself and the gasometer; that detached from the works they would have no value; that the pipes with the gas retorts and gasometer formed one apparatus, which could be worked only

upon condition that there was no separation. This arrêt has so important a bearing upon the point at issue here that I will read it in full:

"En ce qui concerne l'usine à gaz:—Attendu que Roquencourt, qui a saisi l'usine à gaz, a demandé, en première instance que cette usine fut vendue avec toutes ses dépendances ainsi que les immeubles par destination en faisant partie; que cette demande a été contestée par le syndic Depret; que le tribunal a statué sur la contestation; qu'il ne s'agit donc pas, comme le prétend Depret, d'une demande nouvelle portée pour la première fois devant la cour.

"Attendu que les conduites destinées à amener le gaz en dehors de l'usine sous les voies publiques et privées des communes de Cobourg, Dives, et Beauzevol-Houlgate, constituent des immeubles comme l'usine à gaz elle-même et le gazomètre qui en depend; que détachées de l'usine elles n'auraient aucune valeur; Que ces conduites forment avec les cornues, et le gazomètre un seul appareil, qui ne peut fonctionner, qu' à la condition de n'avoir aucune solution de continuité; qu'il y a lieu d'appliquer à ces conduites, par analogie, l'art. 523 C. Civ., d'après lequel les tuyaux servant à la conduite des eaux sont immeubles;

"Attendu que la prétention du syndic de considérer ces conduites comme ne faisant pas partie de l'usine à gaz, sa demande d'imposer à l'adjudicataire l'obligation d'exécuter les marchés pour la fourniture du gaz public et privé dans les communes de ' obourg, Dives, Benzeval, etc."

The other case to which I would refer is a judgment of Mr. Justice Gill, rendered on the 17th day of February last, in the Circuit Court at Lachute, in the case of *Lachute Town corporation* v. *Stuart et al.* The defendants were proprietors of a certain aqueduct consisting of pipes laid under ground from a lake called Sir John's lake, to the town and through the streets, public places and private property when necessary, for the purpose of supplying water to the residents, etc. The works were constructed under the authority of chap. 65, C.S.C., by persons acting as though they constituted a joint stock company under that act, but really being only a partnership. They were sued as a partnership for $101, being $5 business tax and $96 special and general taxes, imposed on the aqueduct as being an immovable. The defendants contended that the aqueduct was not an immovable and was not taxable. The learned judge referred especially to the powers given to a company under chap. 65

C.S.C., to lay pipes in the streets, etc., and held that an aqueduct laid as that was, was an immovable by its nature and that the pipes were taxable.

This view seems to accord with the law in the United States. Cooley on Taxation, p. 368.

The mains of a gas light company are appurtenant to its lots, and only taxable therewith unless otherwise provided by statute. The word "machinery" has been held to include gas pipes laid under the streets, and gas meters. See note 6, p. 368, and cases there cited. Dillon, sec. 789, p. 967, (4th edition) says: "So the property of gas companies and of water companies within the municipality is, ordinarily, taxable by it." See also note 2 where cases are stated as holding that pipes laid in the streets of a city by a gas company, under a grant in their charter, are fixtures, and taxable as real estate; and that a lessee and proprietor of city water works for a term of years, whose contract of lease did not stipulate for exemption from city taxation, was held taxable in respect of such works, they being treated as real estate. I am therefore, of opinion that the respondents had a right to tax these mains and pipes as part of the real estate belonging to appellants in the city of Sherbrooke, and that the petition must be, as it is, dismissed with costs.

The judgment is as follows:—

"Considering that appellants are incorporated for the purpose (amongst other things) of furnishing gas and water to the city of Sherbrooke and certain neighboring municipalities, with power to lay down mains and pipes in the streets, squares and highways, and lanes thereof, to conduct the gas and water to the consumers thereof;

"Considering that appellants have constructed their gas works upon said part of lot one thousand two hundred and thirty nine and their water works upon said part of lot five hundred and seventy one, and have respectively connected therewith and attached thereto the mains and pipes which they are so authorized to lay by their act of incorporation for the purpose of supplying gas and water to the consumers thereof;

"Considering that respondents are duly authorized to levy taxes upon all lots and parts of lots of land in said City with all buildings and erections thereon, and for the purpose of said taxation they have placed a value of thirty-six thousand dollars on the land, buildings and appurtenances constituting said gas works, and of seventy eight thousand dollars on the land, construc-

tions and appurtenances constituting said water works, and that they have included in said respective valuations the value of said mains and pipes respectively attached to said gas works and water works;

"Considering that appellants by their present appeal claim that the said mains and pipes are not taxable property, not being immovables, and moreover said tax was arbitrarily and unjustly laid;

"Considering that said gas mains and pipes are attached to and form part of the gas works (*usine à gaz*), and that said water mains and pipes are attached to and form part of the said water works, and that without said mains and pipes the said gas and water works would be of no value, and appellants could not supply gas and water to persons requiring the same;

"Considering that said gas mains and pipes with the other work constructed on said part of lot one thousand two hundred and thirty nine form but one apparatus (*appareil*) which can only be worked upon condition that there is no disconnection, and that in like manner the water mains and pipes with the works constructed on said part of lot five hundred and seventy one form but one apparatus which can only be worked upon like condition;

"Considering that said mains and pipes for the reasons aforesaid are immovables and are subject to taxation;

"Considering that appellants have failed to prove the material allegations of their petition;

"Doth dismiss the appeal and petition of appellants with costs."

Wm. White, Q. C., for appellant.
H. B. Brown, Q. C., for respondent.

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*COURT OF QUEEN'S BENCH—IN APPEAL.**

Criminal law—53 *Vict.* (*D.*) *ch.* 37, *s.* 11—*Conjugal union—Cohabitation.*

HELD:—The mere fact of cohabitation between two persons, each of whom is married to another person, will not sustain a conviction under R. S. C., ch. 161, as amended by 53 Vict. (D.), ch. 37, s. 11.—*Regina* v. *Labrie*, Dorion, C.J., Cross, Baby, Bossé, Doherty, JJ., March 18, 1891.

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* To appear in Montreal Law Reports, 7 Q.B.

Negligence—Child killed on street railway.

HELD:—Reversing the judgment of LORANGER, J., M. L. R., 7 S. C. 10, where a child, two years of age, through the negligence or want of vigilance of its parents, is allowed to leave its residence and get on the track of a street railway, and is killed there by a car of the railway company, without any fault on the part of the employees of the company, an action of damages by the father of the child will not be maintained.—*Cie. de Chemin de Fer à Passagers de Montréal & Dufresne*, Baby, Bossé, Doherty, Cimon, JJ., (Doherty, J. diss.) June 25, 1891.

Procedure—Husband and wife—Wife erroneously described as separated as to property—Exception to the form—Amendment—Husband summoned only to authorize his wife—Cannot be made a party personally on motion to amend.

HELD:—1. The fact that the wife has assumed the quality of separated as to property, in a deed of lease to her, does not debar her, in an action against her in that quality, from pleading by exception to the form, and proving, that she is common as to property with her husband.

2. The plaintiff, under such circumstances, will be allowed to amend the writ and declaration by describing the wife as common as to property.

3. Where the husband has been summoned merely for the purpose of authorizing his wife (defendant), the plaintiff will not be allowed, on a motion to amend the original writ and declaration, to make the husband a party to the action personally, without summoning him in his personal capacity.—*O'Connor & Inglis*, Lacoste, Ch. J., Bossé, Blanchet, Wurtele, Tait, JJ., Nov. 27, 1891.

Writ of error—Plaintiff in contempt.

HELD:—That where the plaintiff in error, who had been convicted of a misdemeanour, was liberated on bail to appear at the ensuing term of the Court of Queen's Bench sitting in appeal and error, and on his default to appear his bail was declared forfeited, he is not entitled to be heard by counsel on the merits of the case, in his absence.—*Woods* v. *Reginam*, Lacoste, Ch. J., Bossé, Blanchet, Wurtele, Tait, JJ., Nov. 21, 1891.