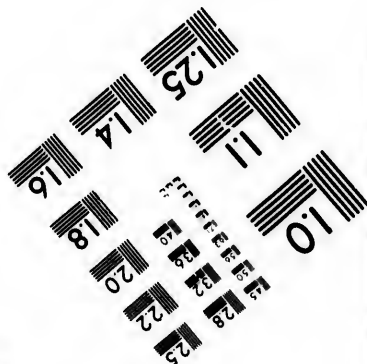
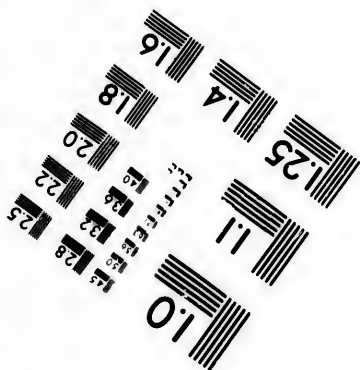
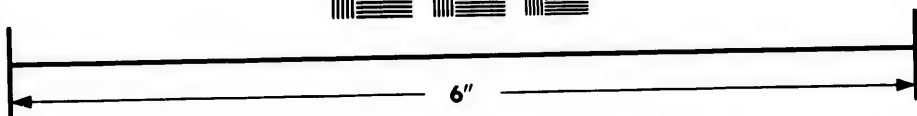
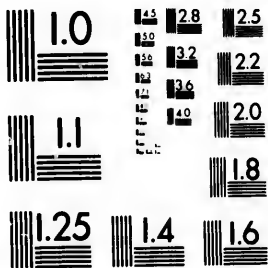


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In the Supreme Court of the Northwest Territories.

APPEAL TO THE COURT IN BANC FROM THE JUDGMENT OF THE
HONORABLE MR. JUSTICE ROULEAU.

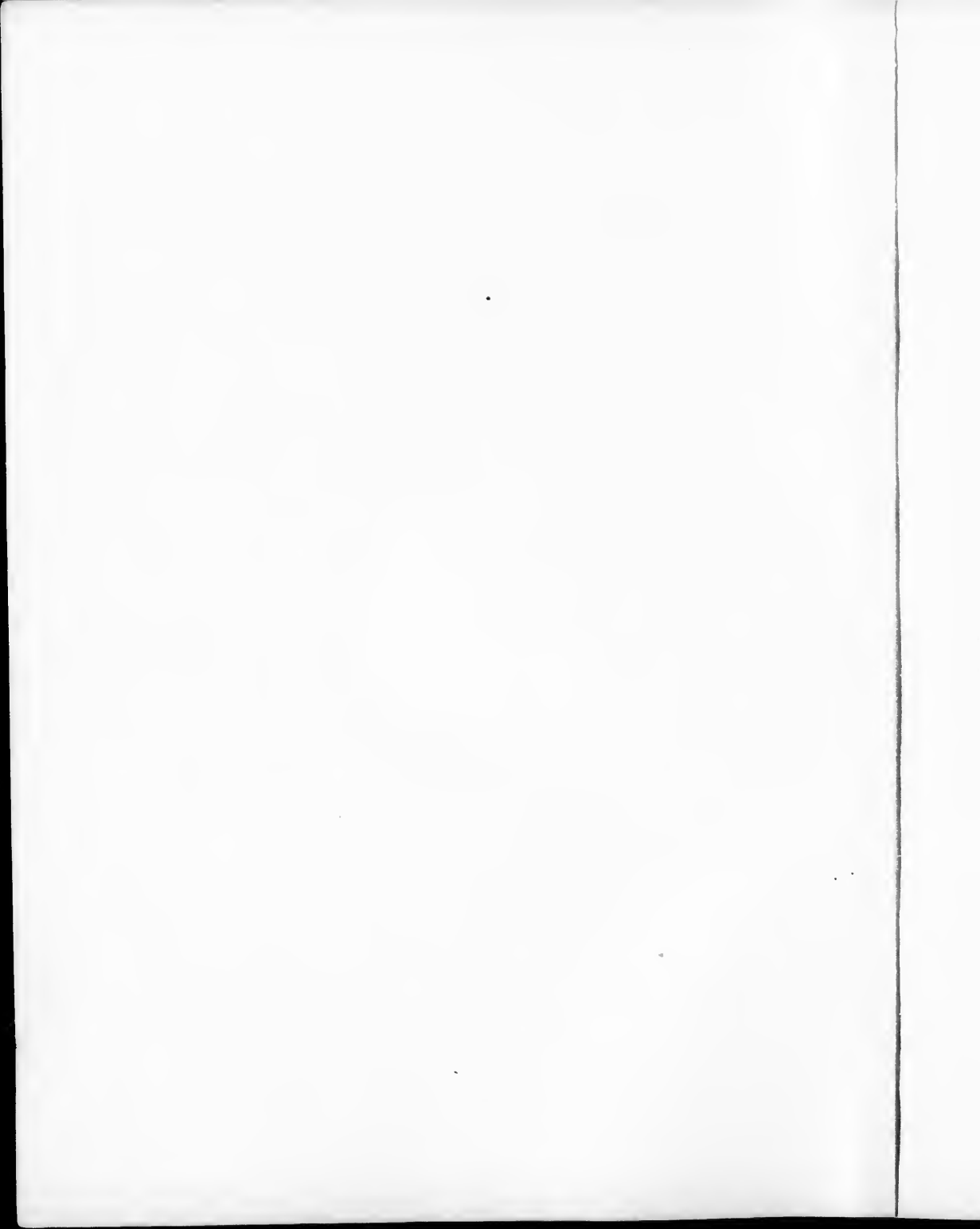
COUNCIL OF THE CITY OF CALGARY, APPELLANTS,
AND
THE CALGARY GAS AND WATERWORKS COMPANY, RESPONDENTS

Appeal Book

MR. J. B. SMITH, Q. C.,
ADVOCATE FOR APPELLANTS.

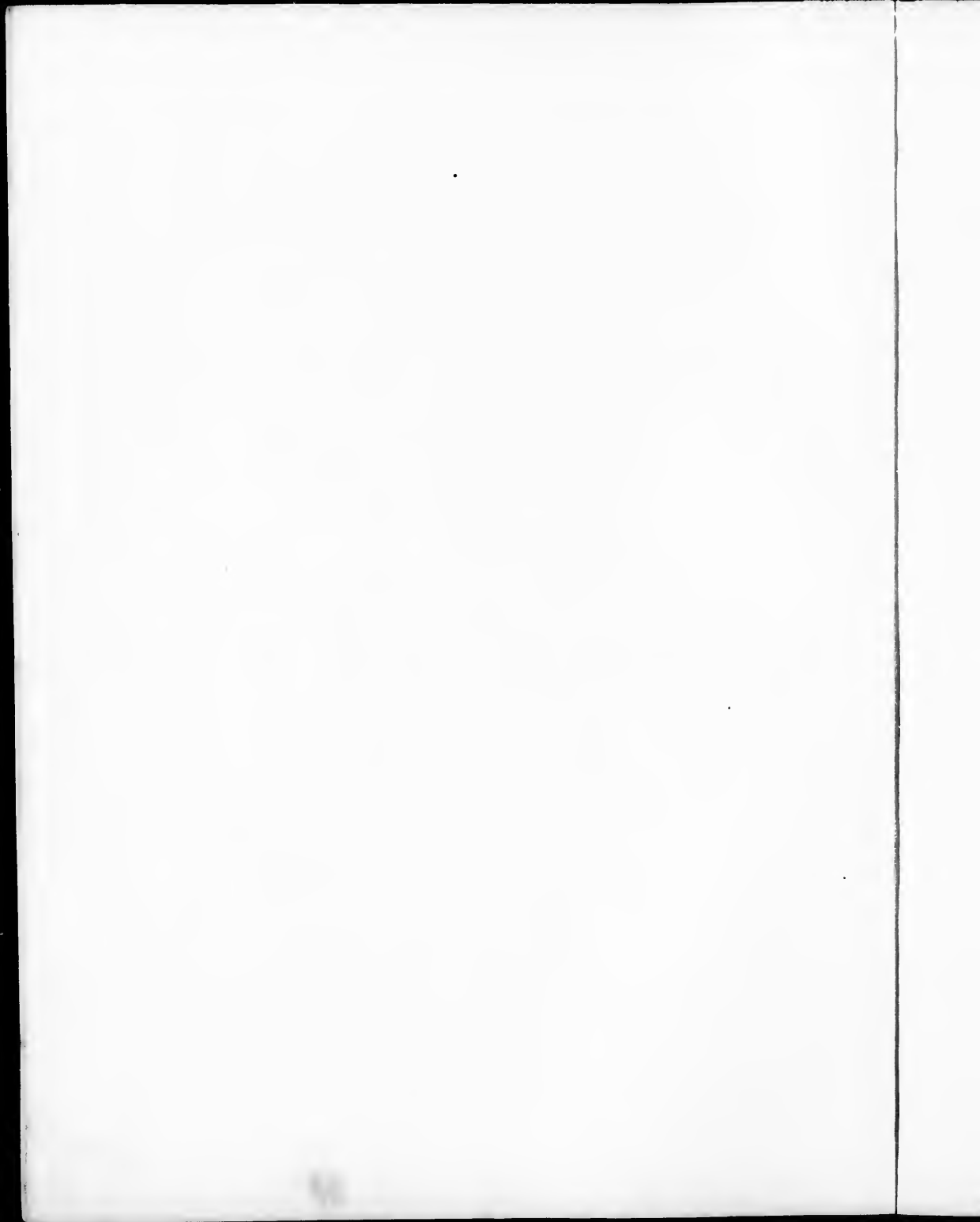
MESSRS. MUIR AND JEPHSON
ADVOCATES FOR RESPONDENTS.

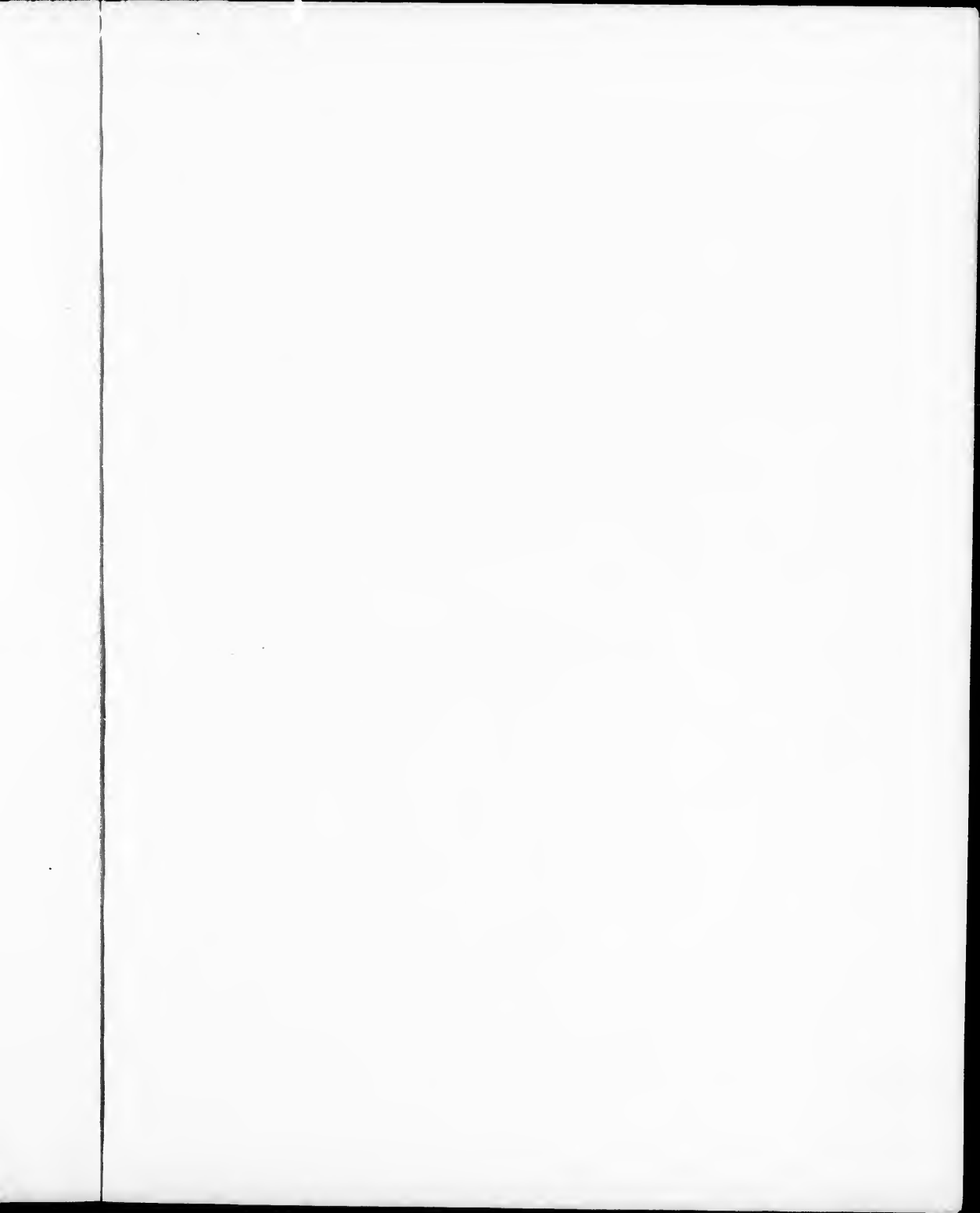
1897
THE ALBERTA TRIBUNE PRESS,
Calgary, Alberta.



INDEX.

Style of Appeal.....	3
Notice of Appeal from Court of Revision.....	4
Formal Admissions on hearing of Appeal before Rouleau, J.....	5
Copy of Assessment Roll and, Notice of Assessment (referred to as Exhibit "A").....	6
Judge's Notes of Evidence, etc.....	7
Exhibit "B" (referred to in Judge's Notes).....	9
Contracts and By-law.....	10
Agreements referred to in Judge's Notes.....	15
Judgment of Rouleau, J.....	20
Notice of Appeal to Court <i>in banc</i>	22
Order re Appeal.....	24
Clerk's Certificate.....	25





In the Supreme Court of the Northwest Territories.

In the matter of the appeal of the Calgary Gas and Waterworks Company from the decision of the Court of Revision of the Corporation of the City of Calgary in respect to the assessment of Lots Twenty-six to Thirty-two, both inclusive, in Block Eleven, Section Sixteen, in the City of Calgary, Assessment No. 873.

BETWEEN

THE COUNCIL OF THE CITY OF CALGARY,

Appellants

AND

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THE CALGARY GAS AND WATERWORKS COMPANY,

Respondents.

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NOTICE OF APPEAL FROM COURT OF REVISION.

TO THE CITY CLERK OF THE CITY OF CALGARY :

TAKE NOTICE THAT The Calgary Gas and Waterworks Company, Limited, being dissatisfied with the decision of the Court of Revision of said City of Calgary respecting the assessment (No. 873) for the year 1897 of Lots 26 to 32, inclusive, Block 11, Section 16, City of Calgary, and of the buildings and other improvements, including the mains alleged to be attached to the pumping station situate on said lots and extending through and underlying the public streets of the City, assessed as real property at the sum of \$100,315.00, and the said Company hereby appeals and gives notice of their intention to appeal from the said decision of the Court of Revision to the Judge of the Supreme Court of the Northwest Territories at Calgary, having jurisdiction in said City of Calgary, on the following grounds amongst others :

1. That said assessment is too high.
2. That said mains and water pipes extending through and underlying the public streets of the City are exempt from taxation.
3. That said mains and water pipes are not under the agreement in respect thereof between the Company and the City liable to be assessed.
4. That said lots, buildings, improvements, mains and water pipes are not assessable, nor is the said Company liable to be assessed in respect thereof, but the shares of the said Company representing said property are alone assessable.
5. The said mains and water pipes are not real property and are not assessable as such.
6. The said mains and water pipes are not assessable with or as part of said lots, or as improvements on or in respect of said lots, or otherwise.
7. The said mains and water pipes are not sufficiently described and particularized, nor does said assessment state the value thereof, and said assessment is not made in accordance with the provision of Ordinance No. 33 of 1893.
8. That said assessment is not according to law.

DATED the seventeenth day of March, A. D. 1897.

"THE CALGARY GAS & WATERWORKS CO., LTD."

"MUIR & JEPHSON,"

Their Advocates and Agents.



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ADMISSIONS.

On the appeal from the Court of Revision for the City of Calgary by the said Company against the assessment of Lots 26 to 32, Block 11, Section 16, the following admissions were made:

1. That the paper marked "A," filed herein, is a true copy of said assessment as it appears on the Assessment Roll, and as the same was made by the Assessor and confirmed by the Court of Revision.

2. That the notice of the said Company's appeal, filed herein, was duly served as provided by the Ordinance No. 33 of 1893, but not the sufficiency (in law) of the notice.

10 DATED the—day of— — — 1897.

"MUIR & JEPHSON,"
Advocates for the Appellants

"J. B. SMITH,"
Advocate for Respondent.

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ASSESSMENT ROLL FOR THE YEAR

No. of Assessments.....	NAME OF TAXABLE PERSON.	Owner.....	Supporter of Public Schools.....	Section.....	Block.....	Lot.	Value of Lot or Parcels Without Improvements.	Value of Buildings and Other Improvements.	Total Real
873	Calgary Gas & Water Works	0	1	16	11	26	\$40	\$100,000	\$100,000
						27	40		
						28	40		
						29	40		
						30	40		
						31	40		
						32	75		

CITY OF CALGARY--NOTICE OF ASSESSMENT

Name—CALGARY GAS & WATERWORKS Co.

Date of Assessment—Dec. 31, 1896.

Number of Assessment	Section	Block	LOTS.	Total Number of Householdrs.	Value of Lot or Parcel Without Improvements.	Value of Buildings and Other Improvements.
873	16	11	26 to 32 inclusive.		\$	\$
						(Including water pipe, the pump, etc., on extending underlyin streets of
						315

TAKE NOTICE that your Real and Personal Property and Income have been assessed notice to the Clerk of the City on or before the 15th day of February next.

EXHIBIT "A," 1897

FOR THE YEAR 1897 FOR THE CITY OF CALGARY.

of Lot or Without Improvements.	Value of Buildings and Other Improvements.	Total Value of Real Property.	Total Amount of Assessment of Public School Supporters.	Date of Assessment.	Date of Delivering or Posting Notices.	REMARKS.
\$40 40 40 40 40 75	\$100,000	\$100,315	\$100,315	1896 Dec. 31	1897 Jan'y 25	Assessment on improvements includes mains and water pipes attached to the pumping station situated on said lots and extending through and underlying the public streets of the City.

RY--NOTICE OF ASSESSMENT FOR THE YEAR 1897.

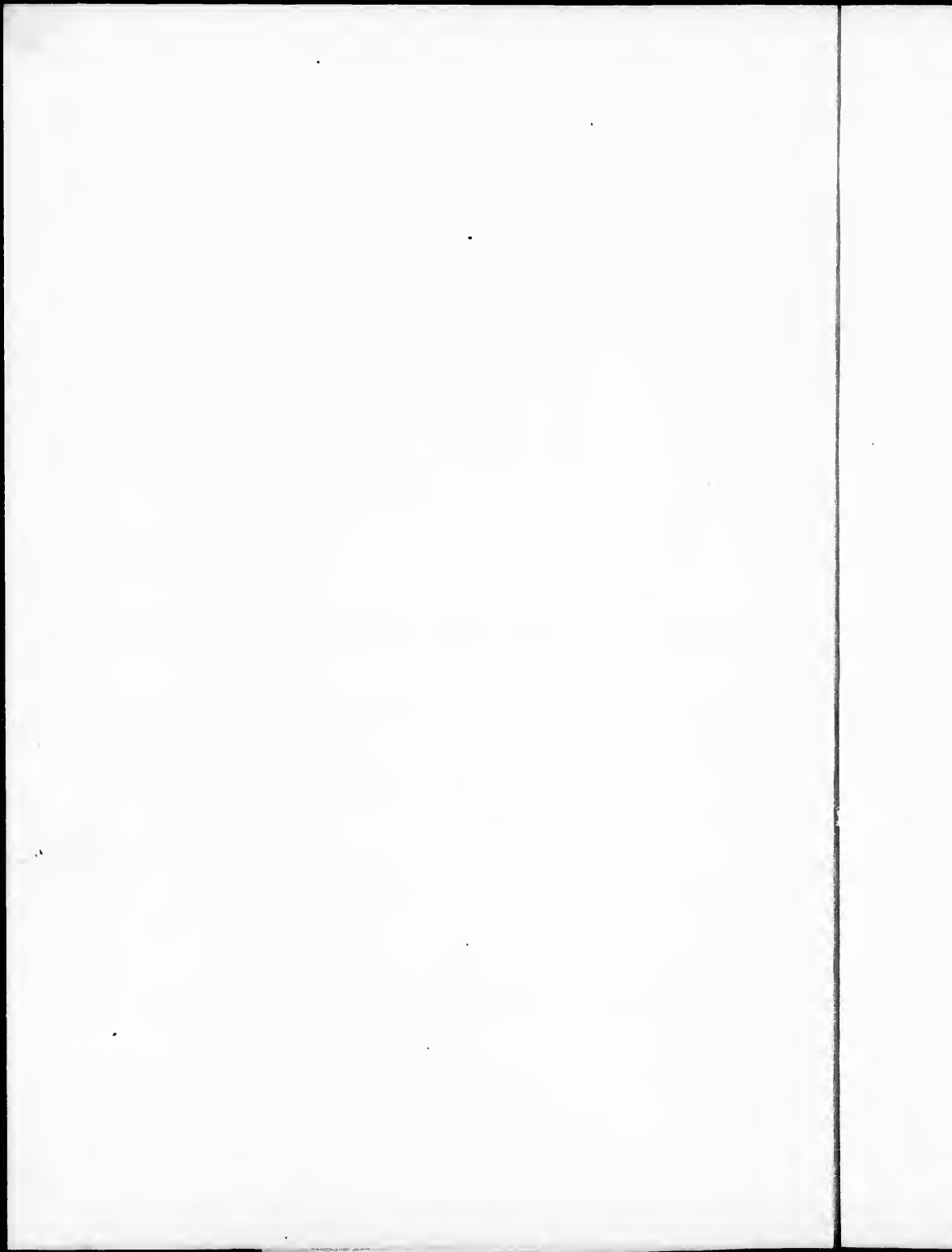
Address—CALGARY.

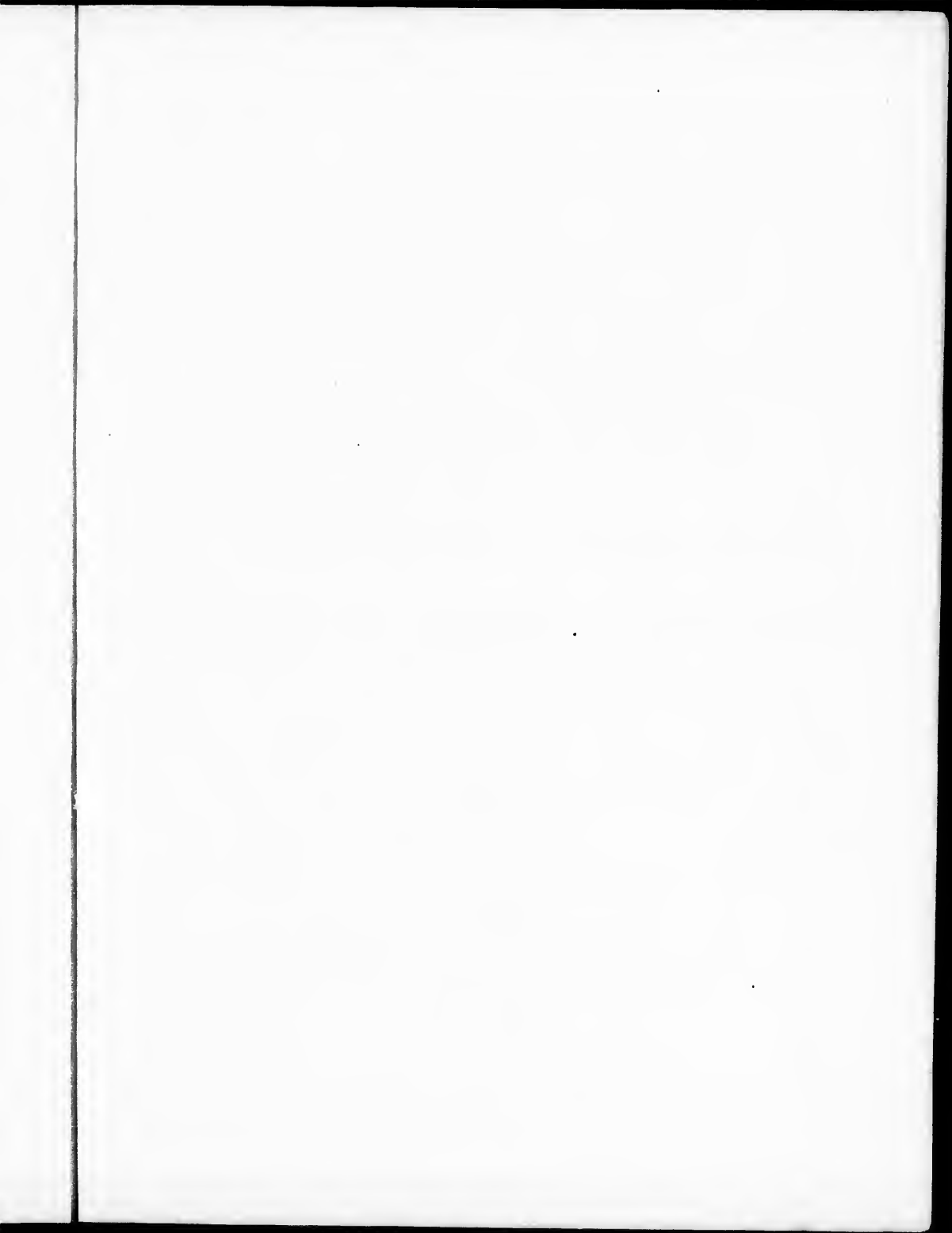
Date of Delivery or Posting of Notice— _____, 1897.

of s.	Value of Lot or Parcel Without Improvements.	Value of Buildings and Other Improvements.	Total Value of Real Property.	Value of Assessable Personal Property.	Amount of Income Assessable.	Total Amount of Assessment—Public School Supporter.	Total Amount of Assessment—Separate School Supporter.
	\$	\$	\$	\$	\$	\$	\$
	315	(Including mains and water pipes attached to the pumping station sit- uate on such lots and extending through and underlying the public streets of the City.) 100,000	100,315			100,315	

Income have been assessed at the above figure. If you wish to appeal from such assessment, you must give proper notice of February next.

CHAS. McMILLAN, ASSESSOR.





JUDGE'S NOTES.

CALGARY, 28th April, 1897.

Appeal from the Court of Revision in respect to the assessment (No. 873) of Lots 26 to 32, in Block 11, Section 16, City of Calgary, by the Calgary Gas & Waterworks Co.

MR. CHAS. McMILLAN, City Clerk.

MR. SMITH for the City.

MR. MUIR for the Appellants.

Appeal on assessment on the following grounds (see Notice of Appeal):

Copy of Assessment Roll filed by consent as the correct copy of the Assessment Roll.
10 Exhibit "A."

Objection taken that the Notice of Appeal is not entitled in the Supreme Court as required by the City Charter.

EVIDENCE.

GEORGE ALEXANDER on oath, says:

Am President of the Co. No additional improvements on the lots from last year. A depreciation of 15 per cent. would be about what would be a fair average on the buildings and lots from last year. The mains run along the streets under and outside of the City. One-sixth of them go beyond the City limits. They form one continuous main. Without the franchise and right I have the value of those mains would be about the value of old iron. The expense
20 to take them would render them valueless. The franchise is got by a contract with the City. (Original contract to be put in.)

Cross-examined:

No objection taken as to the value of the lots. Consider that the buildings, pumps and machinery on the lots are worth this year \$4,600.00, as against \$5,420.00 in 1896. Consider, as I said, there is 15 per cent depreciation since last year. There is no difference in the mileage of the mains since last year. Think I said there were 9 miles of mains and service pipes, or about 8 miles About $\frac{1}{8}$ outside of the City. The mains are connected with the pumping station as last year. The mains are connected with the pumps 7 feet from the surface. The capital is somewhere about \$150,000.00 for the whole plant and pipes. The service pipes belong to
30 the owners of the different lots. Can't say how much was invested in the franchise, because it was before I had anything to do with the company. The franchise includes the power granted by the City and the Ordinance. Don't know how much was paid for that franchise. (Paper Exhibit "B" in previous case to be put in.) There are about 60,000 shares outside of these shares; there would be about \$80,000 worth of bonds.

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(Exact copy of the Assessment Roll to be put in by consent.

Re-examined :

Each customer is connected to the mains by a pipe. The franchise was purchased from parties who had already obtained it from the City Exhibit "B" did not show the actual value of the lands, mains and other improvements, as it included the contracts they had entered into and the franchise.

Evidence closed.

Mr. Muir refers to my own judgment in the appeal last year. (Appeal Book, p. 9.) Facts: One-eighth of Company's pipes are outside of the City limits, and forms part of the continuous main in the City limits;

2nd. That all the Company's mains and pipes after leaving the assessed lots in question pass through and underly the public streets of the city;

3rd. Exclusive of the Company's right of franchise in respect of said mains and pipes and the public streets, said mains and pipes are of no value;

4th. That said right or franchise has not been assessed and that it is not assessable;

5th. That the supply pipes are the property of the consumers and are attached to the Company's pipes and to the buildings of the different consumers;

6th. That the only property of the Company assessed under the present assessment are the lots, the buildings, machinery and improvements thereon which are of the value, viz:

20	Lots.....	\$ 315 00	}	Total of \$5,420.00 not including the lots. Depreciation, \$820.00.
	Buildings.....	1,500 00		
	Pumps.....	2,500 00		
	Boiler.....	1,200 00		
	Well.....	100 00		
	Fence.....	20 00		
	Main pipe and connection.	100 00		

MR. SMITH'S arguments: No valuation of the franchise. Franchise not assessed. Fifteen per cent. depreciation is too high. Assessment does not include anything outside of the City limits. If personal property, I have power to amend Roll. Same cases as already cited

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C. A. V.

JUDGMENT.

Appeal allowed and assessment reduced to \$5,735.00.

"CHAS. B. ROULEAU,"

J. S. C.

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EXHIBIT "B," AS REFERRED TO IN THE JUDGE'S NOTES.

Dec. 10, 1895.

HIS WORSHIP The Mayor of Calgary:

SIR:—In reply to your request for a statement of the particulars discussed at the meeting of the special committee re. waterworks, we beg to submit the following replies to your questions:

COST OF WORKS—The cost of the Waterworks to date has been \$170,600, represented by bonds, shares fully paid up, and indebtedness for advances. The bonds are payable in 1900, with interest at 6 per cent. Interest on the shares is calculated at 5 per cent. Bank interest, in view of the proposed arrangement, is calculated at 6 per cent., though hitherto more has been paid

REVENUE—The number of consumers is over one hundred, and the aggregate of water rates under payment at the present time is \$12,020 per annum. Of this the City and Government pay \$5,500, and the remainder is paid by private consumers. Our rates for private residences, including out-door service and all domestic requirements, are from \$36.00 to \$40.00 per annum, according to size, with the few exceptions in cases of extra large houses or very distant services. This rate represents a reduction from the schedule, as you will see by comparison with the several items contained in the latter. The rates above mentioned are regularly paid and the aggregate sum of \$12,020 contains none but services actually under present payment.

SIZE AND CAPACITY OF BOILERS AND ENGINES—The pumping plant is duplicate and in the highest state of efficiency and repair. It consists of one Brown pumping engine, compound service, condensing high pressure steam cylinder, 8 inches diameter; low pressure steam cylinder, diameter 16 inches; stroke, 16 inches; water cylinder, 8 inches diameter; stroke, 16 inches. One compound direct acting duplex pumping engine, high pressure cylinder, diameter 12 inches; low pressure cylinder, diameter 20 inches; stroke, 12 inches; water cylinder, diameter 10 inches; one boiler, 16x60 inches; and one boiler 14x54 inches. The total pumping capacity of above plant is between 1¾ and 2 million gallons per 24 hours. The present amount of water supplied per 24 hours is under 300,000 gallons. The amount of mains now laid, not counting service connection, is over 8 miles, but at short notice it is difficult to arrive at it with close accuracy

WORKING EXPENSES—The amount of coal used is at the rate of under (?) under \$865 per annum; being less than 1,300 pounds per day, or 237 tons per annum, which would cost \$865. A fair computation for wages of engineer and night fireman is \$1,000 per annum. Our arrangement has been that the engineer should, in addition to taking charge of pump station, take charge of the laying of mains, so that some proportion of his salary is chargeable to capital on account of extensions. For such expenses as oil and repairs and extras as chargeable upon running expenses, we find \$200 a sufficient allowance per annum.

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TERMS—The actual indebtedness of the Company at the rates of interest above mentioned represents an annual charge of \$9,430, which must necessarily represent the rental in any arrangement for leasing. The proposal discussed at our last meeting was for a lease by the City from the Company of the waterworks system for a term of 20 years, at the above yearly rental, with the right of the City to purchase at any time from the Company the entire business at a capitalization of the said rental at $5\frac{1}{4}$ per cent; as the City could borrow the necessary capital for this purpose at $3\frac{1}{2}$ per cent., or two-thirds of the capitalization rate, there would thereby result a net gain to the City of one-third of the entire rental, or over \$3,000 per annum.

The above particulars cover the points of your inquiry, but any other information required
10 we shall be happy to furnish.

Yours truly,

"CALGARY GAS & WATERWORKS CO., LTD."

Signed, G. ALEXANDER.

ORIGINAL CONTRACT AND BY-LAW REFERRED TO IN
THE JUDGE'S NOTES.

BY-LAW NO. 111.

A by-law to grant the consent of the Mayor and Council of the Corporation of the Town of Calgary to the Calgary Gas and Waterworks Company, Limited, hereinafter called The Company, to break up, dig and trench so much and so many of the streets, roads, sidewalks, walks, pavements,
20 squares, highways, lanes and public places of the Corporation of the Town of Calgary, for supplying water, as are necessary for laying the mains and pipes to conduct water from the works of the said Company to the consumers thereof, and to authorize the Mayor and the Clerk of the said Corporation, on behalf of the said Corporation, to enter into an agreement hereto annexed marked "A," with the said Calgary Gas & Waterworks Company, Limited.

WHEREAS, The Calgary Gas & Waterworks Company were, by Ordinance No. 22 of the Ordinances of the North West Territories, passed by the Lieutenant-Governor in Council in the year 1887, duly incorporated as a corporation for the purpose of supplying the said Corporation of the Town of Calgary with gas or water, or with gas and water;

AND WHEREAS, By the said Ordinance it was provided that the consent of the Mayor
30 and Council of the said Corporation of the Town of Calgary should be first had and obtained

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before the said Company should have the right to break up and trench so many of the streets, roads, sidewalks, walks, pavements, squares, highways, lanes and public places of the said Corporation, for supplying water, as might be necessary for laying the mains and pipes to conduct the water from the works of the Company to the consumers thereof;

AND WHEREAS, The said The Calgary Gas & Waterworks Company, Limited, have applied to the said Mayor and Council of the said Corporation for their said consent to lay water pipes and for the supplying to the said Corporation for public purposes;

AND WHEREAS, The said Mayor and Council, by By-law passed on the 28th day of October, 1888, signified their willingness to give the said consent to the said Company for the
10 purpose of laying water pipes, and for the supplying of water to the said Corporation as aforesaid;

Provided, That the said The Calgary Gas & Waterworks Company, Limited, should enter into the preliminary agreement annexed to the said By-law and marked "A."

AND WHEREAS, By the By-law it was recited that it was for the benefit and advantage of the said Corporation of (?) the Town of Calgary that in addition to the said consent being given for the purposes aforesaid, that the Mayor and Clerk of the said Corporation, on behalf of the said Corporation, should be authorized to enter into the preliminary agreement thereto annexed and marked "A," with the said The Calgary Gas & Waterworks Company, Limited.

AND WHEREAS, By the said By-Law the consent of the Mayor and Council of the Corporation of the Town of Calgary was given to The Calgary Gas & Waterworks Company,
20 Limited, to break up, dig and trench so much and so many of the streets, roads, sidewalks, walks, pavements, squares, highways, lanes and public places of the Corporation of the Town of Calgary for supplying water as were necessary for laying the mains and pipes to conduct water from the works of the Company to the consumers thereof, doing no unnecessary damage in the premises and taking care, so far as may be, to preserve a free and uninterrupted passage through the said streets, roads, squares, highways, lanes and public places, whilst the works are in progress, and the supplying of water to the said Corporation for public purposes.

AND WHEREAS, By said By-Law it was enacted that the Mayor and Clerk of the said Corporation, on behalf of the said Corporation, should and were thereby authorized to enter
30 into said preliminary agreement, and to duly execute the same with the said The Calgary Gas & Waterworks Company, Limited.

AND WHEREAS, Under the powers conferred upon them by the said By-Law the Mayor and Clerk of the said Municipality did execute the said preliminary agreement which was annexed to the said By-law and marked "A."

AND WHEREAS, By the said preliminary agreement it was provided that the said Company should employ Thomas C. Keefer, or some other competent engineer, to prepare plans, specifications and details of their scheme, including a proposition for flushing services for the said Corporation; after which the said Corporation should enter into a final contract with the said Company for the construction and running of the said Waterworks.

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AND WHEREAS, The said Company did employ the said Thomas C. Keefer for the purpose aforesaid, and did obtain from him plans, specifications and details of their scheme for said proposed Waterworks, including a proposition and rate for flushing services.

AND WHEREAS, The Mayor and Council desire that certain alterations, additions and modifications should be made in said plans, specifications and in the terms of said preliminary agreement, which desire has been consented to by the said Company, and the said Corporation and The Company have agreed upon the terms of the contract hereto annexed marked "A."

NOW, THEREFORE, The Mayor and Council of the Corporation of the Town of Calgary enacts as follows: "That the Mayor and Clerk of the said Corporation, on behalf of the said
10 Corporation, be and they are hereby authorized to enter into the agreement thereto annexed marked 'A,' and to duly execute the same with the said 'The Calgary Gas & Waterworks Company, Limited.'"

This By-law shall come into force immediately upon the execution of the said agreement hereto annexed marked "A," by the parties thereto.

Done and passed in Council this 12th day of November, A. D. 1889.

Signed, D. W. MARSH,
Mayor.

Signed, E. P. DAVIS,
Clerk.

20 I HEREBY CERTIFY that the foregoing is a true copy of By-law No. 111, of the City of Calgary.

[SEAL]

CHAS. McMILLAN,
City Clerk.

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SCHEDULE "A"

DWELLING HOUSE INCLUDING ONE BATH AND WASH BASINS

	per year
One to two rooms.....	\$10 00
Three to four rooms.....	12 00
Five to six rooms.....	24 00
Seven to eight rooms.....	32 00
Nine to ten rooms.....	36 00
Eleven to twelve rooms.....	40 00
10 Thirteen to fourteen rooms.....	48 00
Fifteen to sixteen rooms.....	54 00
Over sixteen rooms, each additional one.....	6 00
Houses occupied by more than one family, each additional family.....	12 00

BOARDING HOUSES INCLUDING ONE BATH AND WASH BASINS

	per year
Three to four rooms.....	\$31 00
Five to six rooms.....	40 00
Seven to eight rooms.....	44 00
Each additional room.....	4 00

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OTHER INSTITUTIONS.

	per year
Bakeries.....	\$ 80 00 to \$100 00
Banks, including one wash basin.....	40 00 to 60 00
Banks, if used in dwellings, per room additional.....	4 00
Barber shops, including one wash basin for each chair, first chair.....	10 00
Additional chairs, each.....	8 00
Bars.....	40 00 to 100 00
Baths, first one.....	17 00
Baths, each additional one.....	12 00
30 Book bindery, ten persons or under.....	20 00
Book bindery, each additional person.....	1 00
Building purposes, brick work permit.....	50 00
Building purposes, plastering, per hundred yards.....	1 00
Churches.....	20 00 to 60 00
Cigar factories, ten persons or under.....	20 00
Cigar factories, each additional person.....	1 00
Confectioneries, restaurants, oyster saloons, fish and meat market stalls.....	40 00 to 100 00
Dyeing and scouring.....	40 00 to 100 00
Forges, each.....	14 00
40 Hose for gardens.....	10 00 to 30 00
Hose for sprinkling streets or pavements, per foot.....	90
Hose for washing pavement, 25 feet or less.....	14 00

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	Hotels, each room.....	4 50
	Hydrants, fire.....	33 00
	Hydrants, hoists.....	40 00 to 100 00
	Laundries.....	10 00 to 40 00
	Offices.....	20 00 to 60 00
	Photograph galleries.....	35 00 to 135 00
	Printing offices, according to number of presses, (not steam power).....	20 00 to 80 00
	Public halls.....	22 00
	Schools, day, public and private, each 100 scholars.....	14 00
10	Schools, day, public and private, under 100 scholars.....	10 00
	Schools, boarding, each room.....	20 00 to 100 00
	Shops, according to number of hands.....	5 00
	Shops, if used as dwelling houses, extra.....	3 00 to 40 00
	Sprinkling gardens (private).....	5 00
	Sprinkling public gardens, according to contract.....	4 00
	Stables, livery, hotel and sale, per stall or box.....	18 00
	Stables, cows.....	24 00 to 100 00
	Steam engines, each horse power.....	12 00
	Stores.....	12 00
20	Urinals, each.....	12 00
	Water closets, dwelling houses, first one.....	8 00
	Water closets, dwelling houses, each additional one.....	22 00
	Water closets, hotels and public places, first one.....	16 00
	Water closets, hotels, each additional one.....	22 00
	Workshops and factories, 10 persons or under.....	1 00
	Workshops or factories, each additional person.....	40 to 60
	Large, supplied per 1,000 gallons.....	

(Copy.)

CALGARY, Alberta, Nov. 19th, 1889

30 Moved by A. Lucas, seconded by J. A. Lougheed, that the President and Secretary be empowered to sign the final agreement as assented to by the Council of the Municipality of Calgary on the 12th day of November, 1889, for the construction of waterworks in said Municipality, and that the corporate seal of the said Calgary Gas and Waterworks Company, Limited, be affixed to said agreement.

CERTIFIED a true copy of resolution duly passed at a meeting of the Directors of said Company, on the 19th day of November, 1889.

(Signed)

P. MCCARTHY,
President.

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THIS AGREEMENT, made the twelfth day of November, one thousand eight hundred and eighty-nine,

BETWEEN

THE CALGARY GAS AND WATERWORKS COMPANY, LIMITED,
Of the First Part,

AND

THE CORPORATION OF THE TOWN OF CALGARY,
Of the Second Part.

10 WHEREAS, The parties of the first part were by Ordinance Number Twenty-three of the Ordinances of the North West Territories, passed by the Lieutenant-Governor, in the year 1887 duly incorporated as a Corporation for the purpose of supplying the said Corporation with gas or water, or with gas and water;

AND WHEREAS, By the said Ordinance it was provided that the consent of the Mayor and Council of the said Corporation of the Town of Calgary should be first had and obtained before the said Company should have the right to break up and trench so many of the streets roads, sidewalks, walks, pavements, squares, highways, lanes and public places of the said Corporation, as might be necessary for supplying gas or water, or both, for laying the mains and pipes to conduct the gas or water, or both, from the works of the said Company to the consumers thereof.
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AND WHEREAS, The said Company have applied to the said Mayor and Council of the said Corporation for their consent to lay water pipes;

AND WHEREAS, The said Mayor and Council by a By-law dated 28th October, 1888, gave the consent to the said Company, for the purpose of laying water pipes, provided that the said Company enter into the preliminary agreement annexed to said By-law.

AND WHEREAS, The said parties of the first part did enter into the said preliminary agreement, and it was necessary to have the final agreement executed between the parties hereto, as provided in the said preliminary agreement, for which purpose these presents have been prepared, to be executed so soon as the parties of the second part pass the necessary
30 By-law, authorizing such execution.

AND WHEREAS, Such By-law has been passed, as evidenced by the By-law or copy hereto annexed.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that the said parties of the first part in consideration of the premises, and of a By-law passed by the said Corporation granting to them, the parties of the first part, the rights and privileges hereinbefore mentioned, hereby

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for themselves, their successors and assigns, covenant, promise and agree to and with the said Corporation that they, the said parties of the first part, their successors and assigns, shall and will not, at any time, charge the said Corporation or the inhabitants thereof any higher or greater sum for water supplied to them, or any of them, than is mentioned in the schedule hereto annexed marked "A," and that any increase over the rate so named shall entitle the parties of the second part to forthwith acquire the works on the basis hereinafter mentioned, but without bonus, without affecting any other rights or remedies that the said parties of the second part may thereupon have under this agreement, and for the consideration aforesaid the parties of the first part hereby also covenant and agree to and with the said parties of the second part that any rights and privileges which may be granted to them, the parties of the first part, by the said By-laws, shall be forfeited, cancelled and annulled, and become absolutely void, and the said parties of the first part shall have no right in any way to make use of the said mains or pipes, unless the said parties of the first part, their successors or assigns, shall and will on or before the first of September, 1890, bona fide and actively commence operations in the said Municipality for the construction and erection of a good and sufficient system of waterworks, which shall have a pumping capacity of one million gallons in every twenty-four hours, of sufficient power to supply six hydrants at one time with one-inch nozzels, throwing 150 gallons per minute 60 feet high and 125 feet horizontally. If less than six streams are used at one time the parties of the second part shall have the right to demand that water be thrown more than 60 feet high in proper proportion as the number of streams needed at once is reduced less than six. *Provided*, also, that when the said town has a population of six thousand people the parties of the second part may require the capacity of supply to be increased in the proportion of one million gallons for six thousand inhabitants, and also unless they shall and will after such commencement proceed with due diligence to complete such waterworks, and have such waterworks sufficiently completed to enable them to supply the water required by this agreement, upon the first day of August, 1891, and also unless they shall and will erect within the said Municipality 30 hydrants, or two drinking fountains and troughs in lieu of two of said hydrants, as hereinafter provided, at such points as may be decided by the parties of the second part upon such streets of the Municipality along which they, the parties of the first part, shall have laid water mains and pipes, including the street along which the main is extended to the pumping station at block eleven (11), hereinafter mentioned.

Provided, that such hydrants shall be located opposite to such line of mains and pipes so laid; also, unless they shall and will supply pure water to the said parties of the second part for fire and street sprinkling purposes within the said Municipality from said hydrants or drinking fountains and troughs as aforesaid.

And, further, unless they shall and will furnish to the residents of the said Municipality pure water for domestic purposes from the pipes of their said waterworks as the same relaid at a price not to exceed the rates set forth in the schedule hereto annexed marked "A," but such rates shall not include the costs of service pipe connections and plumbing from the mains and 40 pipes to the premises to be supplied, and all connections with the mains for the house supplies shall be made free by the company, but the service from the street line to the houses will have to be put in at the expense of the householder, and all such service pipes, as well as fittings, used in the houses to be subject to the approval and supervision of the Company reasonably

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exercised in the premises; and the commencement of active operations as aforesaid shall be fulfilled by the parties of the first part having at least \$5,000 worth of plant on the grounds at the date of starting as aforesaid, when the security hereinafter mentioned shall be returned and handed back to the parties of the first part.

And the parties of the second part for themselves and their successors hereby covenant, promise and agree to and with the parties of the first part, their successors and assigns, in consideration of the performance of the covenants herein contained, that they, the parties of the second part shall, so soon as the said water is ready to be supplied as aforesaid, from the said hydrants, and is so supplied as herein required, pay to the parties of the first part, their successors and assigns, the annual sum of sixty dollars for each and every of such hydrants, such payments to be made quarterly, and that for any water required by the parties of the second part for flushing services shall be paid for at the rate of forty cents per one thousand Imperial gallons, payable quarterly as aforesaid.

Provided, always, that the hydrants and all public service supply may be terminated on six months' notice if not carried out according to the contract by the Company, and that no payment shall be made therefor unless such service shall be carried out according to the terms of this contract. And it is hereby covenanted and agreed by and between the parties hereto, that this contract shall continue for ten years from the date hereof, except in so far as it may be terminated as aforesaid, and that the parties of the second part shall have the right to renew this agreement for such additional period, not exceeding ten years, as the parties of the second part may desire.

And it is also mutually covenanted and agreed by and between the parties hereto that the parties of the second part shall have the option, in case they so desire, to purchase the waterworks of the said parties of the first part at the expiration of eight years from the first day of August, 1891, or at any subsequent time on giving twelve months' notice of their intention so to do, upon paying the parties of the first part, or to their successors and assigns, the value of the waterworks as a property or running concern, with a bonus of 20 per cent. added for surrender, such value to be decided by arbitration as hereinafter provided.

And if the parties of the first part shall at any time during the continuance of this agreement so desire and request to be done, that they, the parties of the first part, will erect opposite to and connect with any of the mains and pipes which they may have laid in the said Municipality, any and such additional number of hydrants as the parties of the second part may from time to time request them so to erect, and that the payment of each and every such additional hydrant, up to one hundred in number, shall be sixty dollars per annum, payable quarterly as aforesaid; subject, however, to the terms aforesaid.

Provided, That if any dispute should arise under this contract between the parties thereto, or as to the amount to be paid as purchase money for such waterworks, the same shall be adjusted and settled by arbitration as follows: The parties of the first part shall appoint an arbitrator, and the said parties of the second part shall appoint an arbitrator, and these two arbitrators shall appoint a third, or if they cannot agree upon a third, then such third arbitrator shall be appointed by the Judge of the Supreme Court of the North West Territories, for the

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Northern Alberta Judicial District, who may appoint himself as such third arbitrator, and the award of the majority of the said arbitrators so appointed shall be final and binding upon all parties.

That the parties of the first part shall give satisfactory security to the parties of the second part within six months from the date of this contract, in the sum of seven thousand dollars, that they, the parties of the first part, will proceed with the said waterworks as hereinbefore provided, and if such security is given and the parties of the first part should default in proceeding to so carry out such waterworks, such security shall be forfeited to the said Town, but in case such security is not given all the rights and privileges of the parties of the first part under said contract, and under By-law Number 111 of the said parties of the second part, shall be surrendered,
10 and in such case the said parties of the first part shall have no right in any way to lay down such mains or pipes, or any other rights or privileges under this agreement or said By-law.

And the said waterworks shall be constructed according to the system, plans and specifications prepared for the parties of the first part by Thomas C. Keefer, Esquire, and already submitted to the parties of the second part, with the exception that the pumping station of said waterworks shall be located on block eleven, on section sixteen, in the Town of Calgary, according to a map or plan of said section made by the Dominion Government.

That the said parties of the first part shall construct the works and lay their pipes in such a way and in such direction as shall be best available should a full reservoir system be adopted,
20 either by them, the parties of the first part, or of the parties of the second part; also, that they will and shall, at all points where practicable, lay their water pipes on the side of the streets at a distance of twenty feet from the line of the property adjoining such streets, and at a depth of seven feet, and that they will, when the frost is out of the ground, extend the mains of the water pipes when a revenue of ten per cent. on the cost of such extension will warrant them in so doing, provided such extension shall not be less than 250 feet. Also, that before commencing the excavation on any of the said streets, the parties of the first part shall apply to the parties of the second part for a permit to do such excavating, which permit shall be sufficient if issued by the Mayor or Chairman of the Board of Works of said Municipality, and such permit shall be issued when requested within two days after such request, and in default or neglect of giving
30 the same the parties of the first part shall have the right to proceed with their proposed excavating, as if such permit had been granted, and that they, the parties of the first part, shall, whenever they are excavating trenches for their said works, protect the same in a reasonable manner by fences, railings and lights, as will protect the public from being injured by reason of such excavations being open. Also, that the said Municipality shall have free of cost or charges whatever water is required for filling and keeping filled the necessary tanks constructed or to be, in said Town, provided that the Municipality shall have the tanks water-tight and so as to hold the water without leakage.

And, also, that the said parties of the first part shall keep all connection from their mains to the shut-off on line of the streets in good working order at their own expense and charges.
40 And that the parties of the second part shall have the first right to purchase the said works should the parties of the first part decide to sell out at any time previous to the expiration of

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eight years. The parties of the second part shall have the privilege of taking two drinking fountains and troughs in lieu of two hydrants.

Provided, always, that if the said parties of the first part neglect or refuse to go to arbitration in order to settle the value of the said waterworks as a property or running concern of the said parties of the first part as hereinbefore provided, or neglect or refuse to abide by the award of such arbitration when made, then and in such case the said parties of the first part shall forfeit all their rights and privileges under this contract and the By-law aforesaid, and shall no longer have any right in any way to make use of the said mains or pipes.

IN WITNESS WHEREOF the President and Secretary of the said Company have heretofore set their hands and affixed the corporate seal of the said Company, and the Mayor and Clerk of the said Corporation have also set their hands and affixed the corporate seal of the said Corporation, on the day and year first above written.

SIGNED, SEALED AND EXECUTED
in the presence of

(Signed) D. W. MARSH,
Mayor.

(Signed) E. P. DAVIS,
Clerk.

(Signed) P. MCCARTHY,
President.

(Signed) ALEX. LUCAS,
Secretary.

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JUDGMENT OF ROULEAU, J.

THE CALGARY GAS & WATERWORKS COMPANY

vs.

THE CITY OF CALGARY.

This is an appeal by the Calgary Gas and Waterworks Company from the decision of the Court of Revision of the Corporation of the City of Calgary, in respect to the assessment of lots 26 to 32, both inclusive, in block 11, section 16, in the City of Calgary—Assessment No. 873; total value of real property and improvements, \$100,315.00—on the following grounds:

1. That said assessment is too high.
- 10 2. That said mains and water pipes extending through and underlying the public streets of the City are exempt from taxation.
3. That said mains and water pipes are not under the agreement in respect thereof between the Company and the City liable to be assessed.
4. That said lots, buildings, improvements, mains and water pipes are not assessable, nor is the said Company liable to be assessed in respect thereof, but the shares of the said Company representing said property are alone assessable.
5. That said mains and water pipes are not real property and are not assessable as such.
6. That said mains and water pipes are not assessable with or as part of said lots, or as improvements on or in respect of said lots, or otherwise.
- 20 7. That said mains and water pipes are not sufficiently described and particularized, nor does said assessment state the value thereof, and said assessment is not made in accordance with the provisions of Ordinance No. 33 of 1893.
8. That said assessment is not according to law.

The facts of evidence in this appeal are these: There is one-eighth of the Company's pipes outside of the City limits, and forming part of the continuous mains in the City limits; all the Company's mains and pipes after leaving the assessed lots in question pass through and underly the public streets of the City; exclusive of the Company's right or franchise, in respect

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of said mains and pipes and the public streets, said mains and pipes are of no actual value; the said right or franchise has not been assessed; the supply pipes are the property of the consumers and are attached to the Company's pipes and to the buildings of the different consumers; the only property of the Company assessed under the present assessment are the lots, the buildings, machinery and improvements thereon. A similar case as this has already been decided by me last year. The City has appealed to the Supreme Court in Banc. Till the decision is given, I have nothing to add to or retract from my former decision. I therefore refer the parties to the motives given in my judgment. Till a higher tribunal reverses my former decision I am of the opinion that the mains and pipes of the Company passing through the streets form part of the streets, and as such are not assessable, because all property belonging to the City is exempt from taxation; that these mains and pipes are neither fixtures nor appurtenances, nor hereditaments forming part of the realty assessable and belonging to the Company, outside of the limits of said lots; that section 31 of the City Charter defines what is meant by "land," "real property" and "real estate," in all cases of *assessment of real property*; and that the assessment on said lots is excessive.

The assessment on the real property belonging to the Company should be, therefore, as follows :

Lots	\$ 315 00
Pumps	2,500 00
20 Well	100 00
Buildings	1,500 00
Boilers	1,200 00
Fence	20 00
Main pipe and connections	100 00
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Altogether	\$ 5,735 00

Appeal allowed and the assessment to be amended by deducting the sum of \$94,580.00 from the amount of said assessment.

Calgary, 28th April, 1897.

(Signed) CHAS. B. ROULEAU,
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NOTICE OF APPEAL.

IN THE SUPREME COURT OF THE NORTH WEST TERRITORIES.

In the matter of the appeal of the Calgary Gas and Waterworks Company from the decision of the Court of Revision of the Corporation of the City of Calgary in respect to the assessment of Lots Twenty-six to Thirty-two, both inclusive, in Block Eleven, Section Sixteen, in the City of Calgary, Assessment No. 873.

BETWEEN

THE COUNCIL OF THE CITY OF CALGARY,

Appellants

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AND

THE CALGARY GAS AND WATERWORKS COMPANY,

Respondents

Take notice that the Council of the City of Calgary, being dissatisfied with the decision next hereinafter mentioned, hereby appeal to the Supreme Court of the North West Territories *in Banc*, from the decision of the Honorable Mr. Justice Rouleau, a Judge of the Supreme Court having jurisdiction in the City of Calgary, in the said appeal of the said Company from the Court of Revision delivered on the 28th day of April, A. D. 1897, whereby he fixed the total assessment on the real property belonging to said Company at \$5,735.00, instead of at \$100,315.00, as settled by said Court of Revision, upon the following among other grounds :

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1. That such decision is contrary to law and evidence.
2. That the learned Judge should have found that the water mains and pipes of the said Company underlying the streets and lanes in the City of Calgary are real property, or land, or real estate, and as such assessable, either as fixtures or appurtenances to the said lands, namely, the said lots 26 to 32, or as (with the land occupied thereby) hereditaments of the said Company.
3. That if necessary the learned Judge should have amended the assessment roll accordingly, as asked by the said City of Calgary.

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4. That the learned Judge erred in holding that the right to occupy, or to occupy and appropriate, the soil underlying said streets, lanes, etc., by the water mains and pipes of the said Company was a mere easement; as also in holding that such mains and pipes and the land occupied thereby are exempt from taxation under section 38, sub-section 5, of Ordinance No 33 of 1893, or otherwise.

5. Because even if such occupation or occupation and appropriation and the right to occupy and appropriate the soil or part of the soil as above mentioned is a mere easement, such easement is appurtenant or appendant to the said lots.

6. Because there was no evidence before the learned Judge to disprove the valuation
10 (\$100,315.00) and assessment made by said Court of Revision in respect to the assessable real estate of the said Company, and upon other grounds appearing on the record evidence and proceedings herein.

7. That the notice of appeal to said Judge was insufficient and was improperly received by him, the same not being in accordance with section 5 of Ordinance 33 of 1893.

AND TAKE NOTICE, that on MONDAY, the 7th day of June, A. D. 1897, at the hour of ten o'clock in the forenoon, or so soon thereafter as Counsel can be heard, Counsel for the City of Calgary will move before the said Court, *in banc*, at Regina, pursuant to this notice for a reversal of the said decision of the Honorable Justice Rouleau and for a confirmation of the
20 decision of said Court of Revision, with or without an amendment of said assessment roll, or for such other order, including an order as to costs, as may seem proper.

DATED at Calgary this 8th day of May, A. D. 1897.

J. B. SMITH,

Advocate for the said City of Calgary and for
the Council of the said City, Appellants.

To EDWIN R. ROGERS, ESQUIRE,
Clerk of the Court;

And to the CALGARY GAS AND WATERWORKS COMPANY;

And MESSRS. MUIR AND JEPHSON, their Advocates.

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ORDER RE NOTICE OF APPEAL ETC.

IN THE SUPREME COURT OF THE NORTH WEST TERRITORIES.

In the matter of the appeal of the Calgary Gas and Waterworks Company from the decision of the Court of Revision of the Corporation of the City of Calgary in respect to the assessment of Lots Twenty-six to Thirty-two, both inclusive, in Block Eleven, Section Sixteen, in the City of Calgary, Assessment No. 373.

BETWEEN

THE COUNCIL OF THE CITY OF CALGARY,

Appellants

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AND

THE CALGARY GAS AND WATERWORKS COMPANY,

Respondents

Upon the application of the appellants, upon reading the summons herein granted on the tenth day of May, 1897, the affidavit of James Bruce Smith therein referred to, and the proceedings herein;

IT IS ORDERED that the notices served by the appellants dated the 8th day of May, 1897, whereby the appellants gave notice of appeal before the Court *in banc* at Regina, at the sittings commencing on the 7th day of June next, and the service thereof made on the said 8th day of May, be and the same are hereby sufficient as if given and made for the sittings of the said
 20 Court *in banc*, to be held in December next, and that the security for said appeal already deposited be and the same is good as if deposited in connection with said December sittings, and that the appeal herein be heard at said December sittings instead of at said June sittings.

Costs of and incidental to this application to be costs to the successful party in the cause.

DATED at Chambers this 18th day of May, A. D. 1897.

D. L. SCOTT,
J. S. C.

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IN THE SUPREME COURT OF THE NORTH WEST TERRITORIES.

I, the undersigned Clerk of the Supreme Court of the Northwest Territories in and for the Judicial District of Northern Alberta.

Hereby certify to the Registrar of the Supreme Court of the said Territories that the foregoing document is a true copy of the notices, documents, evidence, and other material used before the Judge on the appeal of the Calgary Gas and Waterworks Company from the decision of the Court of Revision of the Corporation of the City of Calgary in respect to the assessment of Lots Twenty-six to Thirty-two, both inclusive, in Block Eleven, Section Sixteen, in the City of Calgary, Assessment No. 873; the Judge's notes taken on the appeal, as furnished
10 me by the Judge; the judgment delivered and notice of appeal filed with me.

That this Appeal Book has been approved by the Advocates for both parties.

That the Appellants filed the said notice on the 8th day of May, A. D. 1897 and that the security required by law for such appeal has been deposited with me.

DATED this 5th day of October, A. D. 1897.

"EDWIN R. ROGERS,"
Clerk of the Court



