1910
*Nov. 10, 11.
1911
*April 3.

THE TOWN OF WESTMOUNT (PLAINTIFF) ..... } APPELLANT;

AND

THE MONTREAL LIGHT, HEAT AND POWER COMPANY (DEFENDANTS) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Assessment and taxes—Construction of statute—Words and phrases—"Terrain"—"Lot"—Immovable property—Charter of the Town of Westmount—56 V. c. 54, s. 100.

Section 100 of the statute of the Province of Quebec, 56 Vict. ch. 54, referred to as "The Westmount Charter," authorized the town council to levy assessments "on every lot, town lot, or portion of a lot, whether built upon or not, with all buildings and erections thereon." The words used in the French version of the statute were, "*toute terrain, lot de ville ou portion de lot.*" The by-law enacted in virtue of the statute purported to impose a tax upon "all real estate" within the municipality, and under the by-law the property of the company, respondents, consisting of their equipment for the transmission of gas and electric currents installed upon and under the public streets, squares, etc., of the town, was assessed as subject to taxation and described on the rolls as "gas-mains and equipment, poles, transformers, wires, etc." In an action by the municipal corporation for the recovery of the amount of taxes claimed in virtue of the by-law and assessment:

Held, Idington J. dissenting, that neither poles carrying electric wires nor gas-mains, and their respective equipments, placed on or under the public streets, etc., of the town, can be deemed taxable real estate within the meaning of the word "terrain" used in the French version, nor of the word "lot" used in the English version of the provisions made by section 100 of the statute, 56 Vict. ch. 54 (Que.). Judgment appealed from (Q.R. 20 K.B. 244) affirmed.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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APPEAL from the judgment of the Court of King's Bench, appeal side (1), reversing the judgment of the Superior Court, District of Montreal, and dismissing the plaintiff's action with costs.

The plaintiff brought the action to recover from the defendants the amount of the taxes imposed upon their electric installations and gas-mains placed upon and under the public streets, etc., of the town in virtue of the by-law, mentioned in the head-note, enacted by the municipal corporation. The municipal corporation claimed the right to assess and levy taxes upon the property in question under the provisions of its charter of incorporation, 56 Vict. ch. 54 (Que.), amended by the Quebec statute, 58 Vict. ch. 54, whereby the name of the municipality was changed to "The Town of Westmount." The action was maintained by the trial judge in the Superior Court, District of Montreal, but that judgment was reversed by the judgment now appealed from. The questions at issue upon the appeal are stated in the judgments now reported.

Beaudin K.C. and *Boyer K.C.* for the appellant.

R. C. Smith K.C. and *Montgomery K.C.* for the respondents.

THE CHIEF JUSTICE.—This is a claim for taxes imposed upon certain poles, wires, transformers, gas-mains and other appliances for the transmission of light and power operated and controlled by the respondents in and through what was, at the time this action was instituted, the Town of Westmount. The respondents own no buildings of any kind within the

(1) Q.R. 20 K.B. 244.

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municipality and their main plants, gas and electric, are beyond its confines. They have no property or interest in the land which they use or occupy and pay nothing for such use and occupation. They are mere licensees of parts of the streets of the town, on which they erect their poles to stretch their wires or under which they carry their gas-mains. The property in the streets, which are admittedly not liable to assessment or taxation, remains vested in the corporation.

The town's charter, 56 Vict. ch. 54 (Que.), authorizes the making of by-laws to impose an assessment on

every lot, town lot, or portion of a lot with all the buildings and erections thereon.

The by-law passed under the authority of this Act purports, however, to impose a tax upon "all real estate" (a term of wider meaning), in the municipality. It is sought to justify this departure because of the difference between the French and English texts of the statute. In the former, the word "terrain" is used to describe that which is to be subject to taxation; and in the English text the word used is "lot." Neither term is a translation of the other; both are to be construed as if they were original expressions. Whichever word is used, whether it be "terrain" or "lot," poles and wires and gas-mains certainly cannot be described as "terrain" and, according to the ordinary use of the word "lot," it cannot be held to designate land in an open and public street. "Terrain," according to Bescherelleainé, means

espace de terre considéré par rapport soit à l'usage qu'on en fait ou qu'on en peut faire, soit à l'action qui s'y passe.

There is no "espace de terre" in question here. That which the by-law purports to reach, assuming merely

for argument that it is *intra vires,* is the taxable real estate situated within the limits of the town. The respondents' property, which is alleged to be subject to taxation, is described in the municipal collection roll as "gas-mains and equipment, poles, transformers, wires, etc." The poles and gas-mains may by reason of their being fixed to the soil be immovables (Beaudry I., p. 38, no. 40, *in fine*), but they certainly do not come within the description of any of the words used in the Act. The "Cities and Towns Act" now in force in the Province of Quebec, under which, however, the appellant takes no power, authorizes the councils of cities and towns to impose and levy taxes on every "immovable" in the municipality. Art. 5730, R.S.Q., 1909. The appellant has no such power, unless we are willing to hold that the words "lots, town lots and parts of a lot," or the word "terrain" are the equivalent of "immovable property." To justify such a conclusion it would be necessary to wipe out the distinction, well understood in the civil law, between property immovable by nature or by destination or by the object to which it is applied. Art. 375, C.C. The term used in the Municipal Code is taxable real estate. Arts. 489 and 986, Mun. C.

Can the poles, wires and gas-mains be assessed as erections on a lot ? If the street on which the poles are erected or under which the gas-mains are laid is not a lot, the taxing power does not exist. If, on the other hand, the street might accurately be described as a lot, as it is admittedly exempt from taxation, how could the poles and mains be assessed as distinct and separate from the lot on which they are erected ? The statute does not provide for the assessment of the

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erection as something distinct and separate from the lot on which it is erected. The statute says:

> The council may impose and levy assessment on every lot, town lot or portion of a lot, whether built upon or not, with all the buildings and erections thereon.

How is the assessment of the building or erection to be made distinct and separate from the lot? Finally, as I have already said, those things which are assessed are described in the collection roll as "gas-mains and equipment, poles, transformers, wires, etc.," without reference to the object (the street) to which they are attached.

I would dismiss the appeal with costs.

DAVIES J.—I concur with the reasons for judgment given by the Chief Justice. I also agree with the reasons given by my brother Anglin for distinguishing the case of *The Consumers' Gas Company of Toronto* v. *The City of Toronto*(1).

IDINGTON J. (dissenting).—The question raised by this appeal is the taxability of the portions of respondents' immovable property acquired by respondents by virtue of legislation enabling such acquisition in the portions it occupies of the streets and of lands under the streets of appellant.

The question turns upon the meaning to be put upon section 100 of the charter of appellant, being 56 Vict. ch. 54 (Que.), with the force given it by other legislation to be referred to and by the light shed upon said section and legislation by the decision of this court in *Consumers' Gas Co. of Toronto* v. *City of Toronto*(1), upon similar legislation and taxing statutes.

(1) 27 Can. S.C.R. 453.

The charter of the appellant has, by virtue of the enactments in article 4178 of the Revised Statutes of Quebec, 1888, the whole of chapter one in which it is found, relative to town corporations, incorporated therein, unless so far as expressly excluded.

The said section 100, directly in question herein, is as follows:

> 100. The council may make by-laws to impose and levy: (1) An assessment on every lot, town lot or portion of a lot, whether built upon or not, with all buildings and erections thereon, not to exceed one cent in the dollar of the actual value of such property, as entered on the assessment roll of the town, for which assessment the owner thereof shall be personally liable.

The difficulty in this case lies in the meaning of the words "every lot" used in the above English version by a legislature expressing its intention in two languages.

A preliminary inquiry is thus started regarding the meaning of this section by reason of finding the French version as follows:

> (1) Une cotisation, dont le propriétaire est personnellement responsable, sur tout terrain, lot de ville ou portion de lot, etc., etc.

The words "every lot" can hardly be said to be a happy translation of "tout terrain" or the latter words a fair translation of the former as usually understood. Yet I am inclined to think the literal meaning of the one helps us to understand the sense in which the other is used.

Speaking with the greatest deference on the subject of the possible or probable meaning that may have become attached to the word "lot" common to the two languages in use, yet having in each some entirely different shades of meaning, I doubt if Mr. Beaudin's ingenious suggestion that lands becoming taxable by severance from a seigniory having originated the use of the word "lot" relative thereto, can be safely relied

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upon as furnishing a definite solution of the problem before us.

I pass to the wider sense in which I think the solution rests. In passing I may remark I have given due consideration to article 4 of the Civil Code, and also the clause of the Act enacting the Revised Statutes of Quebec, 1888, relative to conflict of language in the English and French copies of it, as well as the broad question of how in the case of conflict of meanings apparent in any Act of the Legislature of Quebec, between the two languages in which the statutes are expressed, the matter should be dealt with.

The interpretation clause I refer to has regard only to the general scope and purpose of the Acts consolidated.

Article 4 of the Civil Code does not, in express terms, solve the question, but implies by its inclusion of "French and English" copy as to what is to be held authentic, that due heed is to be given to both.

I am inclined to think the purview of the Act itself must be kept in view, and the selection of the version to be adopted in case of conflict, ought to be that which will best effect the purpose of the Act looked at as a whole.

For the present I apply these suggestions, and bear in mind the possible shades of difference in the meaning of the terms "every lot" and "tout terrain." If the French version governed it would seem to be impossible to deny the taxability of the land in question.

Reverting to the subject of other legislation bearing upon this section 100, we find there are certain classes of property specifically exempt by chapter one, I have referred to. It may thus be implied that all

other land is taxable, and if so this land is clearly taxable.

There is, I must say, a curious feature of the charter in this regard which seems to imply that article 4500, R.S.Q., giving these exemptions has been substituted by something else. I am unable to find any such substitution. I think, therefore, the force of the implication derivable from these exemptions is not derogated from as article 133 of the amended charter implies and speaks of in case of a substitutional enactment.

If, again, we turn to the chapter incorporated in the charter save what does not touch this, we find in article 4501, R.S.Q., a provision for railway companies reporting their "assessable lands" and that, in default in article 4502, R.S.Q., we find the valuators directed, if the return is not made in time, to assess

> all the immovable property belonging to the company * * * in the same manner as that of any other ratepayer.

There certainly is here implied that all other immovable property of other ratepayers, including respondents, is to be assessed.

It seems to be, therefore, that the clear implication that the express exemption carries, as well as this there found relative to railways, must mean that all immovable property other than that expressly exempted is taxable.

And that this property here in question is immovable property there would seem to be no doubt, and hence in these implications assessable.

This quality of property acquired under statutes enabling the use of streets or lands on which they rest lies at the bottom of the question to be solved herein.

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I will hereafter refer to the meaning of the phrase "every lot," but now proceed to a consideration of decisions by which we must be governed. They rest upon statutes creating, as the respondents' charter and concessions got thereunder do, proprietary interests in lands over which streets existed. A comparison of such cases and statutes with this case and the statutes upon which the title of the respondents rests to the property it has in the streets or ground thereunder, in question, is most instructive.

The technical meaning of the terms used in the respective Acts conferring upon the corporate bodies in question in said precedent cases, their respective properties in streets, in either the said English or Canadian cases, which I am about to refer to, might have warranted entirely different conclusions to have been reached.

It is urged in each class of such cases that the property or right of property acquired in the streets, was an easement, and hence not taxable as land.

It was, therefore, urged that the taxable quality of the property could not fall within the meaning of the respective taxing statutes involved.

It seems to me also that there was more to have been said in any of such cases for those seeking exemption so far as related to the taxable quality of the respective properties acquired by virtue of being land, than for the respondent's claim herein.

One of the leading cases is the *Metropolitan Railway Company* v. *Fowler*(1). It rested upon Geo. III. ch. 5, sec. 4, enacted before railway tunnels or gas-pipes in a public street were within the range of ordinary human vision. When we

(1) (1893) A.C. 416.

have regard to these facts and the further facts that the said statute was careful to enumerate a great variety of specific real property subject to become liable to taxation as well as to use the general terms such as "lands and tenements" and "hereditaments" and that such terms were so placed in the section as to afford an argument for restricting them to the specific subjects named, said case and other such cases in England give, what is needed herein, an illustration of how statutes may and ought to be interpreted in order that the obvious purpose thereof may be executed.

In the same manner following that and other authorities (of which some rest upon other taxing statutes) so well collected in the judgment of the learned Chancellor Boyd in disposing of the case of *Consumers' Gas Co. of Toronto* v. *City of Toronto*(1), in support of the right to tax plaintiff's gas-mains there in question, is it not competent for us to hold the property of respondents now in question taxable land, within the meaning of the charter of the appellant ?

In the first place let us assume that taxable interest in the land must be something other than a mere servitude, and inquire whether or not that which the respondent has got by virtue of the powers conferred upon it, is servitude or not.

It does not seem to me that it falls within the definition of servitude in the Civil Code. Indeed, it did not seem to be argued that it did so.

And if we look at the opinion of the late Chief Justice of this court in the *Gas Consumers' Case*(2), in which the majority of the court agreed, we find that

(1) 26 O.R. 722. (2) 27 Can. S.C.R. 453.

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opinion very pronounced in relation to the nature of the right there acquired by virtue of a similar statute declaring it could not be called an easement.

Without adopting servitude and easement as in every respect interchangeable terms, or on every point of operation co-extensive, the general nature of the right either term stands for is in its inherent legal quality so much like the other that for the present purpose we may assume the opinion I refer to as deciding that phase of the question.

In comparing the acts of incorporation of the Consumers' Gas Company and the New Gas Company of Montreal and the Montreal Gas Company, the predecessors, and so to speak the progenitors of the respondents, and the powers given them and the amendments that aid in giving the rights the respondents had conferred upon them in regard to invading the streets and taking possession of parts of the soil therein and thereunder for their own use, I am unable to distinguish the quality of property thus acquired in part of the soil in and under parts of appellant's streets, from that acquired by the other company in and under part of the soil in Toronto's streets.

The right of property in each case was and is derivable from the legislation which gives it in each case, subject to some slight differences in the mode of being permitted to acquire, or conditions under which it is to be acquired, but in no way affecting the essential character or quality of the property once acquired.

Such being the case, I must hold we are governed thus far conclusively by the judgment in the *Consumers' Gas Company of Toronto* v. *City of Toronto* (1).

(1) 27 Can. S.C.R. 453.

The ownership of the soil in the street in either case makes little difference, save in this, that the title in the soil may or may not have been acquired by the municipality in either given case.

Article 4616, R.S.Q., under which appellant's rights exist, says:

> The right to use as public highways all roads, streets and public highways is vested in the then respective municipal corporations * * * except so far as reserved, etc.

The Toronto streets fall under legislation that seems at first blush slightly more favourable to the idea of the title in the soil passing to the municipality.

The Act there vested the highway in the municipality. But after all it was only the highway and not of necessity the legal estate that vested.

Whatever difference there may be seems against the respondents rather than otherwise.

It is possible in either case a title may be acquired as in opening new streets by purchase.

We are left here absolutely uninformed as to the facts bearing upon this point in the present case. We are referred to authority that expresses opinion on the general rule of law in municipalities in Quebec in this regard.

This particular municipality can, as a creature of statute, only have that given it thereby.

We are thus far from reaching the effect sought in the contention, set up in vague terms, that as the municipality owned the streets there was no room for other ownership in the soil thereunder or any part of it.

But after all, setting up the previous title, whatever it may have been, is entirely beside the question, for the real question is, whether or not the legislation

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acted upon had not subtracted from that ownership a part thereof, and given that part to another to have and hold in legal form liable to taxation, within the meaning of the taxing statute.

I am, therefore, having shewn the nature of this title in part of said lands over which streets ran, as a taxable possibility, only concerned to shew that the Toronto streets as regards the taxability of gas-mains if placed under them by a company, were in that regard as remote from being subject to taxation, as it is possible to urge for these respondents.

The Ontario law exempted, at the time the *Consumers' Gas Company's Case*(1) arose, by express language "every public road and way or public square" from assessment.

Yet this court saw its way to tax the gas-main under such "public roads and ways." In the case in hand no such distinct exemption occurs. I am not assuming from this that the appellant's roads or streets as such are any more taxable than those which were thus exempted.

I do say, however, we have a pretty decided difference as against respondents for them to overcome in view of the decision I am referring to.

Not only was the language which vested the highway in the municipality stronger than we have to deal with, but that was expressly exempted and the mode of levying the rate in due course of law as provided for there, seemed a barrier to interpreting the statute in the way it was.

And yet that interpretation was reached by having due regard to the substance of things and disregarding

(1) 27 Can. S.C.R. 453.

the semblance of mere words that did not touch the substance.

I am thus brought to the point of whether similar mains so placed under similar legislation having been found clearly taxable, as part of the land, the mains now in question can be held to have been covered by the language of article 100 already quoted at the outset.

Let the words "every lot" be looked at in contradistinction to the words that follow, "town lot or portion of a lot." What meaning have they ? If we suppose "town lot" means the same thing, then we have no possible use for the words "every lot." Therefore we have an assessment only of town lots or other lots. If we confine the assessment to what is usually designated by the term "town lot," we will have one that omits the larger field spaces that no doubt exist in this suburban town.

In short, we have, by such an interpretation, the assessment reduced to an absurdity. We must assign some meaning to the phrase "every lot" if we can. If we turn to the Century Dictionary, for example, we find of the many meanings "lot" is capable of, this:

> A portion or parcel of land; any piece of land divided off or set apart for a particular use or purpose; as a building lot; a pasture lot; all that lot, piece or parcel of ground (a formula in legal instruments).

Or if we turn to Murray we find substantially the same.

Is there anything to prevent us from assigning to it the like meaning relative to the lot of land that piece of land occupied by the mains in question ? Is there not intended to be expressed simply all ground, or all lands, comprising amongst others the parcel of land that the mains occupy ?

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If it does not mean all lands, what can it mean ? If we consider the French version, surely that is what the words do mean, and are intended to signify.

If we have not the interpretation clause of the Ontario "Assessment Act" to assist, have we not quite as comprehensive a term to which we must, if possible, assign a meaning, and which cannot well be assigned anything but the, if possible, still more comprehensive term "all lands."

There was a good deal said in argument as to the buildings referred to in the clause in question, which neither helps nor hinders any one here.

But I may be permitted to suggest that the reference to buildings is no doubt to shew that *primâ facie* they are for general purposes of assessment to be taken as part of the property here defined to be so intended in contra-distinction to the provision in another place made for assessing for special purposes the land, exclusive of the buildings.

I may, before concluding, observe, that the late Chief Justice in the *Consumers' Gas Company Case* (1), sets out four sections of the Ontario "Assessment Act," which it may be said made his task easier than this submitted to us. Do they, or any of them contain anything to distinguish that Act and decision from this ? Of these sections, 6 is but a variation of words expressing the like provision to that in the appellant's charter making all taxable property assessable. This does not help either way.

Section 7 he relies on is but a statutory declaration of what is to be implied in legislation of this character. For all the authorities so profusely collected in re-

(1) 27 Can. S.C.R. 453.

spondents' factum to demonstrate that all property of the same kind must be in reason treated alike in assessing, go to shew that this property which is of the same kind or legal quality as that which beyond doubt is taxable, ought to be assessed if justice is to be done.

The respondents' whole effort is to escape the substantial application of the fundamental principle upon which for purposes of a mere side issue they have so elaborately relied.

Returning to the four sections the late Chief Justice selected as helpful, section 9 cannot avail here.

Now, does the interpretation clause, section 2, quoted by him, help or hinder in arriving at a conclusion here, and drive us to distinguish this case from that ?

I cannot see that it affects the matter at all. For the substance and the fundamental principle upon which that judgment proceeds is clearly that the kind of property the respondents have in the mains and support thereof, is real estate, in other words, the land I have found above.

I conclude from the foregoing considerations that the mains in question are taxable.

Is there a possibility of making a distinction in principle when we come to consider the poles set in the soil of the streets and all they carry ? I think not. I am helped in this regard by the express disapproval in the Consumers Gas Company's case, of the case of *The Toronto Street Railway Co.* v. *Fleming*(1), which had held a street railway, though affixed to the land, not taxable.

I am clearly of a different opinion, however, as to

(1) 37 U.C.Q.B. 116.

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the meters, and I incline to hold the same as to the service pipes, that they, so far as laid upon private property for the temporary service thereof, cannot be looked upon as in the same class of property as the mains or the poles and wires.

Are these possible of severance in the assessment ? And if not, how does that affect the validity of the assessment ?

As to the first year's assessment another question arises. Has there ever been for that a proper assessment ? I certainly would have been glad to have had exchanged for practical considerations bearing on this kind of question, some of the elaborated learning in the respondents' factum on points hardly disputable.

Clearly respondents were called upon, if an error, to distinguish, if they could, the personal from the real estate, in the first year's assessment, and in default of there being any attention paid thereto, I think now the assessment must be taken as relative to assessable property.

I may observe that the information to be put in the assessment roll and thus in the schedules delivered, is by article 4499, R.S.Q., to be what the council directs. No direction is shewn that would render such a brief though, I think, most unsatisfactory statement, improper much less illegal in a way leading to nullification.

I would deduct from the amount allowed by the learned trial judge such sums as the assessing of meters produced, and if any like item can be deducted relative to the service pipes or connections, clearly only personal property, it ought to be done.

After I had drafted my foregoing opinion, the

parties were asked to produce a plan of the appellant city. Waiving for the moment my objection to that course as undesirable and irrelevant, especially so when the plan bears a date later than appellant's incorporation, I may say the suggestion made relative thereto induces me to say that any consideration of numbers of lots on a plan of any date must be a false guide to the meaning of this statute.

Each of these numbered tracts of land when divided or subdivided must have new streets carved thereout. Are these new streets to become forever taxable? And existing streets might need to be closed or diverted and is the land over which the streets ran to be forever free from taxation? Certainly not any more than I hold these parts expropriated by the respondent are to be or remain so.

Subject to the said modification I would allow the appeal, and with costs here and in the court of appeal.

And if in any way a reference can be profitably directed as to the service pipes, I would direct it to be had.

DUFF J. concurred in the opinion stated by the Chief Justice.

ANGLIN J.—If I did not think this case distinguishable from *Consumers' Gas Co. of Toronto* v. *City of Toronto*(1), I would apply that decision, although not satisfied that, if the question was *res integra*, I should reach the conclusion that the Toronto gas-pipes were assessable as land or real property under the Ontario "Assessment Act" of 1892. In my opinion,

(1) 27 Can. S.C.R. 453; 23 Ont. App. R. 551.

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however, there is a clear distinction between the provisions of that statute, which were under consideration in the *Consumers' Gas Company's Case*(1), and those of the charter of the Town of Westmount, formerly Côte St. Antoine, 56 Vict. (Que.) ch. 54, which is now before the court.

The Ontario Act contained a provision that

all property in this province shall be liable to taxation subject to the following exemptions:

None of the exemptions had any bearing on the *Consumers' Gas Company's Case*(1). The "Westmount Act" contains no similar provision. It authorizes,

an assessment on every lot, town lot, or portion of lot, whether built upon or not, with all buildings and erections thereon,

or, according to the French version,

une cotisation * * * sur tout terrain, lot de ville, ou partie de lot, soit qu'il y existe ou non des bâtisses, avec tous bâtiments et constructions dessus érigés.

The Ontario statute enacted that

All municipal local or direct taxes or rates shall * * * be levied equally upon the whole ratable property real and personal of the municipality;

and "real property" was thus defined:

"Land," "real property" and "real estate" respectively shall include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land and land covered with water, and all mines, minerals, quarries, and fossils in and under the same except mines belonging to Her Majesty.

Under this provision it was held that the gas-pipes of the Consumers' Gas Company placed under the streets of the City of Toronto were liable to assessment as real property.

(1) 27 Can. S.C.R. 453.

I make no distinction between gas-pipes laid under the streets and poles erected in the streets to carry electric wires or lamps.

By the Ontario "Assessment Act," the purpose of the legislature that all property not exempted should be liable to taxation was expressly declared. With the aid of the clause defining "real property" the court thought that the gas-pipes in question — which were undoubtedly "property in the province" and as such were expressly declared to be liable to taxation — should be deemed real property rather than personal property — the two classes into which all property appears to have been divided by the statute for purposes of assessment.

In the "Westmount Act" the subjects of taxation are confined to "every lot, town lot or portion of lot," and "buildings or erections thereon." I have stated that the "Westmount Act" contains nothing to indicate that it was the purpose of the legislature that all property in the municipality should be assessable. There is no definition of the words "terrain" or "lot" to extend their meaning or application. This statute is upon these grounds, in my opinion, clearly distinguishable from the Ontario "Assessment Act" of 1892, and *The Consumers' Gas Company's Case*(1), therefore, does not rule the appeal now under consideration.

Unless the land itself on or in which it is placed be a "lot, town lot or portion of lot," any erection on or in it is not assessable under the provision of the Westmount charter. The land occupied by the defendants' poles is not itself assessable because it does not come within the descriptive words of the statute. The word "lot" is used in contra-distinction to "town lot"

(1) 27 Can. S.C.R. 453.

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and probably signifies a parcel of land owned privately, but not laid out in town lots — certainly not a public highway. In construing the word "terrain" in the French version, we cannot overlook the use of the word "lot" in the English version as its equivalent. "Terrain" is here used in contradistinction to "lot de ville" and, like the word "lot" of the English version, means a lot or parcel of land which is not a town lot. Compare article 709 Municipal Code.

It may be that, as counsel for the appellant so strongly contended, the poles, etc., of the defendants are immovables. But the right to tax immovables is not conferred by the statute. Because the things which the municipality asserts the right to tax are not, in my opinion, within the "literal construction of the words" of the charter defining the subjects of assessment — and that is the construction upon which the taxpayer has a right to stand: *Pryce* v. *Monmouthshire Canal and Railway Companies*(1), at pages 202-3 — I have reached the conclusion that they are not taxable. Having regard to the well-known rule formulated by Lord Cairns in *Partington* v. *Attorney-General*(2), at page 122, cited by Mr. Justice Carroll, the letter of this taxing Act may not be extended because the court may think it would be more equitable that the property in question should be assessable or even that the spirit of the statute requires it. See, too, *Tennant* v. *Smith*(3), at page 154; *Horan* v. *Hayhoe*(4), at page 290.

For these reasons I think this appeal fails and must be dismissed with costs.

I reach this conclusion without reference to the

(1) 4 App. Cas. 197.
(2) L.R. 4 H.L. 100.
(3) [1892] A.C. 150.
(4) [1904] 1 K.B. 288.

plan of the Town of Westmount produced after argument at the request of the court.

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TOWN OF WESTMOUNT. v. MONTREAL LIGHT, HEAT AND POWER CO.

Anglin J.

Appeal dismissed with costs.

Solicitors for the appellant: *Boyer & Gosselin.*

Solicitors for the respondents: *Brown, Montgomery & McMichael.*