CANADIAN PACIFIC RAILWAY COMPANY ..... APPELLANT;

AND

THE CORPORATION OF THE CITY OF SUDBURY ..... RESPONDENT.

1960

*Nov. 24, 25
Dec. 19

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Taxation—Assessment of railway right-of-way—Based on average value of land in the locality—Exclusion of streets and public lanes—Appraisal of actual cash value of assets on a notional sale between two railway companies—The Assessment Act, R.S.O. 1950, c. 24, s. 44(2)(a) and (d).

The railway company appealed against the assessments of certain of its property in the City of Sudbury on the ground that the assessor failed to observe the requirements of s. 44(2) of *The Assessment Act*. Both the Municipal Board and the Court of Appeal confirmed the assessments, and the company then appealed to this Court.

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Held: The appeal should be dismissed.

Per Curiam: The appellant's argument that streets in the matter of area but not in the matter of value must be included in computing the average value of land in the locality was rejected. "Value" in the context of s. 44(2)(*a*) of the Act means "value in exchange", a value which streets do not have.

With respect to the assessment of the company's assets under s. 44(2)(*d*) of the Act, the assessor is not required to value these assets as part and parcel of the whole railway system and base his valuation upon the earnings of the system. The test is an appraisal on notional sale of these particular assets to another railway company and not on a notional sale of all the assets of the appellant company to another railway company.

APPEAL from a judgment of the Court of Appeal for Ontario, affirming a decision of the Ontario Municipal Board. Appeal dismissed.

C. F. H. Carson, Q.C., Allan Findlay, Q.C., and *G. P. Miller,* for the appellant.

J. J. Robinette, Q.C., for the respondent.

The judgment of the Court was delivered by

JUDSON J.:—The Canadian Pacific Railway Company appeals against the 1954 quinquennial assessment of certain of its property in the City of Sudbury on the ground that the assessor failed to observe the requirements of s. 44(2) of *The Assessment Act*. Both the Municipal Board and the Court of Appeal have confirmed the assessments.

The first issue is on the assessment of the roadway or right-of-way, which by s. 44(2)(*a*) the assessor is required to assess in the following way:

> (*a*) the roadway or right-of-way at the actual value thereof according to the average value of land in the locality; but not including the structures, substructures and superstructures, rails, ties, poles and other property thereon.

There is no dispute about the geographical limits within which land in the locality is to be taken to lie for the purpose of the computation required by the subsection. The difficulty arises from the phrase "average value of land in the locality". The assessor ignored in his computation the streets and public lanes within the area. The railway says that he is required to include them. If he does so and assesses them as of no value, as the railway says he must, the consequence will be a lower average value and a lower assessment for these railway lands. The argument is simple. Streets are

land; they are not excluded from land by the interpretation section of *The Assessment Act*; all real property in Ontario is liable to assessment and taxation subject to certain exemptions from taxation; and by s. 4(8) streets are assessable but not taxable. Therefore streets in the matter of area but not in the matter of value must be included in computing the average value of land in the locality. Any other procedure, it is said, would involve the addition of words to the statute, the filling in of supposed gaps and the usurpation by the court of the function of the legislature. (*Magor and St. Mellons Rural District Council v. Newport Corporation*[1]).

This argument for the application of the literal or plain meaning rule to the construction of s. 44(2)(*a*) fails to recognize that the phrase to be construed is "average value of land in the locality" and that the word "value" is not self-explanatory. Streets have value and they are land. But it is not the same kind of value as that attributable to the land which borders on the streets. The ambiguous word in the phrase is "value". Streets have value for public use but they have no monetary worth, marketable price or value in exchange. It was for this reason that the Municipal Board upheld the assessor in excluding them from the computation.

Words are not mathematical symbols. In every context the word "value" cannot have the same meaning or shade of meaning. As a matter of statutory construction I think the Municipal Board was correct in finding that "value" in the context of s. 44(2)(*a*) meant "value in exchange" for this is what the Board did when it supported the assessor in averaging the value of all those lands in the locality which have value of the nature and kind in question.

I prefer the basis of the decision of the Municipal Board to that of the Court of Appeal, which held that land in the locality meant taxable land in the locality. There can be land in the locality which has a value in exchange and which is subject to the same assessment as other land but is exempt from taxation. The sounder interpretation, it seems to me, with respect, is to say that "value" in this context means "value in exchange".

The purpose of this legislation is clear. Its purpose is equality—to require the assessor to treat this kind of railway property as other property in the neighbourhood—and

[1] [1952] A.C. 189, [1951] 2 All E.R. 839.

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the exclusion of public streets and lanes from the calculation of the average value of land in the locality is required if the purpose is to be attained.

The second issue in the appeal is on the assessment of six parcels of land used for a variety of railway purposes, most of which are essential to the continued operation of the railway. These are to be assessed under the provisions of s. 44(2)(*d*) of *The Assessment Act*, which reads as follows:

> (*d*) the real property not designated in clauses *a*, *b* and *c* of this sub-section in actual use and occupation by the Company, at its actual cash value as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises.

This section confronts the assessor with a very difficult task—an appraisal of the actual cash value of these assets on a notional sale between two railway companies. I agree with Roach J.A. that the reason for the introduction of the notional sale was to avoid any suggestion that these assets could be valued at their scrap or salvage value. Old illustrations of cases where this had to be done because of the wording of the legislation are to be found in *Re London Street Railway Assessment*[1], *Re Queenston Heights Bridge Assessment*[2], *Re Bell Telephone and City of Hamilton*[3].

The railway submits that these assets must be valued as part of a going concern and that this valuation must depend largely on the earnings of the company. Therefore, it is submitted, the assessor must begin with the last quinquennial assessment of these assets in 1949. This assessment had been confirmed on appeal to the Municipal Board. Ten per cent. should be added to this figure, because during the period 1950 to 1954 railway earnings had increased by this amount.

I can see no reason why the assessor must take as his starting point the last quinquennial assessment of these assets. His task is defined by the subsection. The test is an appraisal on notional sale of these particular assets to another railway company and not on a notional sale of all the assets of the Canadian Pacific Railway Company to another railway company. The assessor is not required to value these assets as part and parcel of the whole Canadian

[1] (1900), 27 O.A.R. 83. [2] (1901), 1 O.L.R. 114.
[3] (1898), 25 O.A.R. 351.

Pacific Railway system and base his valuation upon the earnings of the system. The subsection does not require this and the sheer impossibility of such a task is sufficient to condemn this interpretation.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: F. H. Britton, Toronto.

Solicitor for the respondent: John Ryan, Sudbury.

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*PRESENT: Locke, Cartwright, Martland, Judson and Ritchie JJ.