

OXFORD PAPER COMPANY (RESPONDENT) }	}	APPELLANT;
AND		
THE MUNICIPALITY OF THE COUNTY OF INVERNESS (APPEL- LANT) }	}	RESPONDENT.

1947
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 Oct. 15
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ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA

Assessment Act, Statutes Nova Scotia, 1938, c. 2—Assessment of companies—No incompatibility between s. 10 and s. 28—S. 28 not an exclusive code for assessment of companies—Company a person under s. 10 and neglect of company to comply with assessor's demand under s. 10 entails penalty under s. 15 of loss of right of appeal—N.S. Assessment Act, 1938, c. 2, ss. 2, 10, 12, 13, 15, 28-30 and 38.

Section 10 of *The Assessment Act*, Statutes of Nova Scotia, 2 Geo VI, 1938, chapter 2, requires every person to give all necessary information to the assessors if required by them, for the purpose of enabling them properly to assess him.

Section 15 provides that every person, who—

- (a) refuses to give the assessors information by them reasonably required;
or
 - (b) refuses to furnish any particulars required by this Act or by the forms prescribed thereby; or
 - (c) neglects to fill up and return the form referred to in Section 10 of this Act after being requested by an Assessor to do so,
- shall not be entitled to appeal from the assessment of his property or income.

Section 28 (1) provides that in assessing the property of any joint stock company, other than a banking company, and its agencies, the assessors shall, before the assessment for the whole municipality is made up, notify in writing the managers or resident agents of the several joint stock companies in the town or municipality of the value at which they estimate the property of such companies, and require such manager or agents, if they object to such valuation, to severally furnish to such assessors * * * written statements, under oath * * * of the actual value of the real property and of the personal property of such companies * * *

Sub-section (2) provides after service of the notice upon any such manager or agent 14 days shall be allowed him to furnish the assessors with such written statement, under oath * * *

Section 29 provides where the manager or resident agent delivers such written statement * * * the assessors shall adopt the valuation sworn to, which shall be binding, subject only to appeal by the clerk under the provisions of this Act.

*PRESENT: The Chief Justice and Taschereau, Rand, Estey and Locke
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Section 30 provides that if such statement is not furnished within the time and in the manner prescribed, the assessors shall proceed upon their own original valuation, and such valuation shall then be binding, subject only to appeal under the provisions of this Act.

Held: There is no incompatibility between the subject matter of section 10 and section 28. The former provides information on which the assessors' valuation is in large measure based, and which is in fact a prior necessity under section 28. The latter section does not embody an exclusive code for the assessment of companies. A company is therefore a "person" within the meaning of section 10.

Held: Since the right of appeal given companies under section 30 lies only "under the provisions of this Act"; neglect by a company to comply with the provisions of section 10, an obligation placed on all ratepayers, entails the penalty under section 15, of the loss of the right to appeal from the assessors' valuation.

APPEAL from the judgment of the Supreme Court of Nova Scotia (1), reversing the judgment of the County Court and confirming the decision of the Board of Revision and Appeal.

The material facts of the case are fully stated in the judgments now reported.

F. D. Smith K.C. and *J. G. Fogo K.C.* for the appellant.

W. C. Dunlop K.C. for the respondent.

The judgment of the Chief Justice, Taschereau, Rand and Estey JJ. was delivered by:

RAND J.:—This appeal involves the assessment of the Oxford Paper Company in the Municipality of the County of Inverness. From the original assessment made by the assessors, the company took an appeal to the Board of Revision and Appeal. The Board held the company to have lost its right to appeal by the effect of section 15 of *The Assessment Act*, through its neglect to comply with a notice given by the assessors under section 10 (1), requiring particulars of its property within the Municipality. A further appeal was then taken to the County Court which purported to set aside the order of the Board on the view that the right had not been lost. On a further appeal to the Supreme Court (1), the order of the County Court was reversed and the case is now brought here.

(1) (1947) 20 M.P.R. 281;
 [1947] 3 D.L.R. 415.

Sections 10 and 15 are as follows:

10. (1) Every person shall give all necessary information to the assessors if required by them, for the purpose of enabling them properly to assess him, and for this purpose, the assessors may, before the first day of October in every year, cause to be delivered to any ratable person from whom such information is required, within the town or district within which such assessors are acting, a notice which may be in the form (A) in the second schedule to this Act, or which may be varied so as to disclose, when completed, any further or other information required by the assessors in order to enable them to make a proper assessment of the person to whom the notice is delivered.

(2) The assessors shall have the right at all reasonable times to enter upon any lands or premises and to inspect the same, or any property thereon, for the purpose of making a proper assessment.

15. Every person, who—

* * * * *

(c) neglects to fill up and return the form referred to in Section 10 of this Act after being requested by an assessor to do so, shall not be entitled to appeal from the assessment of his property or income.

Form "A" in the second schedule is headed "A statement of taxable property and income of * * * for the year * * *". In five columns are to be entered the details of all ratable real and personal property, the ratepayer's valuation of each item, the assessor's valuation, exemptions, and finally the net valuation, with the first two to be filled out by the ratepayer.

The contention is that section 10 does not apply to a joint stock company by reason of sections 28, 29 and 30 which read:

28. (1) In assessing the property of any joint stock company, other than a banking company, and its agencies, the assessors shall, before the assessment for the whole municipality is made up, notify in writing the managers or resident agents of the several joint stock companies in the town or municipality of the value at which they estimate the property of such companies, and require such manager or agents, if they object to such valuation, to severally furnish to such assessors, within fourteen days from the dates of the service of such notices upon them, written statements, under the oath of such managers or agents, of the actual value of the real property and of the personal property of such companies, not including any undisturbed minerals.

(2) After service of the notice upon any such manager or agent fourteen days shall be allowed him to furnish the assessors with such written statement, under oath, of the actual value of the real and personal property respectively of such companies.

29. Where the manager or resident agent of any such joint stock company delivers such written statement under oath to the assessors within such fourteen days, the assessors shall adopt the valuation sworn to, and such valuation shall be binding, subject only to appeal by the clerk under the provisions of this Act.

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30. If such statement is not furnished within such fourteen days by such manager or agent, the assessors shall proceed upon their own original valuation, and such valuation shall then be binding, subject only to appeal under the provisions of this Act.

In acting under section 28, the assessors have already made a valuation on the basis of information which section 10, as one means, is designed to enable them to obtain: that estimate they present to the company for acceptance or for such other valuation as the company may see fit, under the oath of one of its representatives, to make. As is seen, if no action is taken by the company, the valuation of the assessors stands, subject by section 30 "to appeal under the provisions of this Act."

The word "person" is defined in section 2 to include "firm, company, association and corporation" and in section 10 (1) "every person" prima facie embraces a joint stock company. It is only, therefore, if section 28 can be deemed to constitute an exclusive code for dealing with the property of such a company that any question arises as to the latter's inclusion in section 10 (1). But between the subject matter of section 28 and section 10 there is no incompatibility whatever: the latter provides information on which the assessor's valuation is, in large measure, based, information which is in fact a prior necessity to action under section 28. Considerable stress was laid upon inferences to be drawn from a history of the legislation; but the significant fact is that in the earlier form, the provisions of the present section 10 were specifically applicable to corporations, notwithstanding a section identical with section 28.

The further question is also raised whether section 30 provides an absolute appeal to the exclusion of the provisions of section 15. Since the appeal lies only "under the provisions of this Act", I see nothing to take the company out of the penalty of section 15. The obligation to furnish the information under section 10 is a basic requirement, placed upon the whole body of ratepayers. A company is conceded a special privilege under 28 by which it can, in effect, reject the assessor's valuation, make its own assessment and place upon the municipality the onus of appeal against it. Once it is found that section 10

applies, the penalty becomes operative and an appeal "under the provisions of the Act" must necessarily be governed by that fact.

I agree, therefore, with the Court of Appeal and would dismiss the appeal with costs.

LOCKE J.:—I cannot agree with the contention of the appellant that secs. 10, 12, 13 and 15 of the *Assessment Act* do not apply to the joint stock companies referred to in secs. 28, 29 and 30. I see no ambiguity in the language of these sections. The word "person" is stated by sec. 2 of the Act to include "firm, company, association and corporation"; unless the context or subject matter otherwise requires. Sec. 10 imposes upon every person the obligation to give all necessary information to the assessors, if required, and authorizes them to deliver to any ratable person from whom such information is required a notice in the Form (A) in the Schedule to the Act varied in such manner as the assessors deem necessary to enable them to make a proper assessment. Sec. 12 provides that any ratable person to whom this notice is delivered shall fill up the form annexed to the notice with a true statement of the particulars required and sign and, within fifteen days after receipt thereof, return it to the assessors. Sec. 13 provides that statements so furnished by the ratepayer shall not bind the assessors but authorizes them to assess such person for such amount as they believe to be just and correct. Sec. 15 states in terms that every person who, *inter alia*, neglects to fill up and return the form referred to in sec. 10 shall not be entitled to appeal from the assessment of his property or income.

It is, however, said that none of these requirements apply to joint stock companies other than banking companies or their agencies since secs. 28, 29 and 30 constitute what is in effect a code for the assessment of such companies, so that the "appeal under the provisions of this Act" referred to in sec. 30 is unaffected by the provisions of sec. 15. It is further contended that an examination of the sections analogous to secs. 10, 12, 13 and 15 in previous enactments of the *Assessment Act* shows that the term "person" should be interpreted as referring to individuals only.

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Dealing with the first of these contentions: secs. 9 to 15 are grouped in the *Assessment Act* under the heading "Duties of Assessors": sec. 9 requires the assessors before the first day of November in each year to ascertain "by diligent inquiry and examination the names of all persons liable to be rated within the town or district for which they are appointed, their ratable property and income and the extent, amount and nature of the same". The obvious purpose of secs. 10 to 15 inclusive is to enable the assessors to obtain the information which is essential to enable them to prepare the assessment roll in the manner required by secs. 16 and 17. Sec. 16 requires that the roll be prepared showing the names of all persons, firms, companies, associations and corporations liable to be rated with the description of the property assessed, the value and a concise description of each separate piece of real property and the personal property, the amount of the ratable income of each person and such other particulars as the council may direct. The manner in which the roll is to be prepared is defined in more detail by the rules contained in sec. 17 and it is to be noted that property partially or wholly exempted from taxation under the Act is to be valued and entered on the assessment roll in the same manner as taxable property, though under a separate heading. The information obtainable by the assessors by the use of Form (A) would appear to be an almost indispensable aid to them in discharging their duties under secs. 16 and 17.

The purpose of secs. 28, 29 and 30 which, in a substantially similar form, have been in the statute for a very long time is to enable joint stock companies other than banks or their agencies to state in advance of their being assessed whether they object to the valuation assigned to their taxable property by the assessors and, if they do object, to file a written statement under the oath of their manager or agent of the actual value of the real and personal property of the companies. If this is done, the assessors are required to adopt the companies' own valuation of their property and unless an appeal is taken by the clerk of the municipality such valuation is binding. I see no conflict between the provisions of these sections and

those of secs. 10 to 15 inclusive. In the case of individuals, firms, associations and ratepayers other than the joint stock companies referred to in sec. 28, the onus of appealing from the assessment is cast upon the ratepayer; in the case of these companies they are enabled at their election to cast that onus upon the clerk. The statement under the oath of the manager or agent of the company is not in substitution for, or in lieu of, the information required by all ratepayers to be supplied by sec. 10. The statement under sec. 28 is not required to be a detailed statement of the various assets of the company but would be satisfied by a simple statement as to the value of all the company's real and personal property. The notice referred to in sec. 28 is to be given by the assessors after they have obtained the information deemed by them to be necessary as to the assets of the company and have made their valuation of such assets in the manner prescribed by sec. 17.

Sec. 30 provides that if the sworn statement is not furnished within fourteen days by the manager or agent the assessors shall proceed upon their own valuation and "such valuation shall then be binding, subject only to appeal under the provisions of this Act". The reference to the appeal in this section appears to me to be simply to qualify the absolute nature of the immediately preceding words. The purpose is to reserve the right of appeal: however, the appeal is an appeal "under the provisions of the Act" and is that given by sec. 38 and the succeeding sections and is not a substantive right given to these companies.

The appellant urges further that an examination of what might be called the legislative history of secs. 10, 12, 13, 15, 28, 29 and 30 indicate that where the word "person" appears in secs. 10, 12, 13 and 15 it should be interpreted as excluding joint stock companies other than banks and their agencies. I assume the contention that we may resort to this aid to interpretation is based upon the theory that the concluding words of sec. 30 cast such doubt upon the meaning of the term in sec. 15 that we are entitled to examine these earlier enactments upon the principle stated

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by Bramwell L. J. in *Attorney General v. Lamplough* (1), even though there be no ambiguity in the language of secs. 10, 12, 13 or 15.

Provisions substantially the same as those now contained in secs. 28, 29 and 30 of the *Assessment Act* appeared as secs. 73, 74 and 75 of cap. 58 R.S.N.S. 1884. By sec. 8 of that Act the assessors for the municipality appointed by the Municipal Council were required to "proceed to ascertain by diligent inquiry the names of all the taxable inhabitants and also all taxable property within the same, its extent, amount and nature". Thereafter they were required to prepare the assessment roll containing detailed information of the taxable property of the ratepayers. In 1888 the Act was amended and consolidated by cap. 2: sec. 11 declared it to be the duty of every ratable person to give all necessary information to the assessors and such persons were required, if requested by the assessors, to furnish details of their real and personal property and income in the form prescribed by sec. 12 of that Act: the nature of the information to be furnished corresponded closely to that now required by Form (A) of sec. 10 of the present Act. Sec. 15 provided that any person who, after request by the assessors, should decline to give the required information should not be entitled to appeal in respect of overvaluation. Neither this Act nor cap. 58 of the Revised Statutes of 1884 defined the word "person" but, by sec. 7 of *An Act for the Construction of Statutes*, cap. 1, R.S.N.S. 1884, it was provided that "'Person' may extend to bodies politic and corporate as well as to individuals" unless otherwise provided for or such construction would be inconsistent with the manifest intention of the legislature or repugnant to the context. By cap. 15 of the Statutes of 1889 secs. 10, 11 and 12 of the 1888 Act were repealed and new sections 10 and 11 were enacted. The former required the assessors to deliver to each ratepayer a copy of Schedule B to the Act with a notice similar to that provided for by sec. 12 of the 1888 Act. The new section 11 declared that it should be the duty of "every ratable person, co-partner or corporation to fill up or cause to be filled up the said schedule with a true statement of the

particulars thereby required of his or their taxable personal property and income and sign the same" and return it to the assessors within fifteen days after its receipt. Sec. 15 was not amended. In the revision of 1900, *cap.* 73 R.S.N.S. sec. 2 declared that unless the context otherwise required "person" should be construed as including firm, company, association and corporation. Sec. 8 amended sec. 10 as enacted by *cap.* 15 Statutes of 1889 by substituting for the words "each ratepayer", where the same first appeared in that section, the words "every person ratable within the town or district", and sec. 10 which corresponded to sec. 11 of the 1889 amendment substituted for the word "co-partner" the word "firm" and added a penalty clause whereby "every person" who failed to fill up and return the form was made liable to a fine. Sec. 14 of the 1900 revision which dealt with the contents of the assessment roll amended sec. 15 of the 1895 consolidation by substituting for the words "ratable persons", where the same appeared in that section, the words "all persons, firms, companies, associations and corporations liable to be rated". By *cap.* 5, 1918 sec. 12 the obligation to fill up and return the form sent by the assessors was imposed upon "every ratable person" rather than upon "every ratable person, firm or corporation" as in sec. 10 of the 1900 Act, and the penalty clause was omitted. Sec. 16 reenacted sec. 14 of the 1900 Act with an immaterial change. With minor changes designed to clarify the meaning of the sections, the present sections 10 to 15 inclusive correspond with those sections in the 1918 consolidation.

The appellant contends that the change made by sec. 11 of the Act of 1889, whereby it was declared that it should be the duty of "every ratable person, co-partner or corporation" to deliver the particulars required by sec. 10 while sec. 15 was not amended, indicates that it was the intention of the legislature that from thenceforth sec. 15 should be held to apply to individuals only. The word "person" which by sec. 7 (*p*) of *cap.* 1 R.S.N.S. 1884 might be interpreted as extending to bodies corporate was clearly to be so construed in secs. 9 to 15 inclusive of the 1888 Act and should be assigned that meaning in the corresponding sections of the Act as amended in 1889 so that it was un-

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necessary to mention corporations in sec. 11 in order to include them: it was equally unnecessary, it may be added, to mention co-partners. The obligation to make the return imposed for the first time by sec. 11 of the 1888 Act was imposed upon all ratepayers including these companies and all of them were subject to the penalty of losing the right to an appeal upon failure to give the assessors the information or the statement requested. If the argument that naming corporations in sec. 11 of the 1889 Act, when it was unnecessary to do so, exempted them from the operation of sec. 15 is carried to its logical conclusion, the amendment made in 1900 which struck out the word "co-partner" and substituted the word "firm" would have the effect of exempting partnerships from the operation of sec. 12 of that Act which reenacted sec. 15 and continued the use of the term "person", since sec. 2 which defined that expression in the 1900 statute specified in terms that it should include firms.

I am unable to draw any inference favourable to the contention of the appellant from the amendments made by the consolidation of 1918 when by sec. 12 the legislature reverted to the expression used in sec. 11 of the 1888 Act "ratable person" and eliminated the words "firm or corporation": the most reasonable explanation is, I think, that it was done to eliminate words that were unnecessary and to make uniform the language of secs. 9 to 15 inclusive falling under the heading "Duties of Assessors". The fact that in the same consolidation they did not amend sec. 14 of *cap.* 73 R.S.N.S. 1900, or change other sections of the Act where the expression "persons, firms, companies, associations and corporations" is used where the word "person" would suffice does not afford any evidence in my opinion that the word "person" in sec. 12 should be interpreted in any other manner than that defined by the interpretation section of the Act. An examination of the entire statute shows that there has been little uniformity in the manner in which the word "person" has been used alone or in conjunction with the words "firm, company, association and corporation". Thus in sec. 35 of the 1918 Statute under the heading "Appeals from Assessment" the

right of appeal is given to any "person" and it is under sec. 38 of the present Act, which is in similar terms, that the appellant asserts its right of appeal, and in many other sections the term is used when the obvious intention is to include all ratepayers.

In the dissenting judgment of Graham J., mention is made of the fact that Form (A) in the second schedule of the Act and which is referred to in sec. 10 is inapt for use by an ordinary joint stock company and that it is unlikely that the Act intended that two statements of the same matter should be required of such a company. It is, however, to be noted that the information required to be given by a ratable person under the Act of 1888 required substantially the same information and it is conceded that secs. 10 to 15 inclusive of that Act applied to companies as well as to individuals. The present form, as did the form required in 1888, asks details of the income of the ratepayer and this the municipality does not seek to tax but as the assessment roll is to exhibit and value all of the property of the ratepayer within the municipality, including that which is exempt, I think no significance is to be attached to this fact. While Form (A) might be worded in more appropriate terms for the use of companies I think it is intended, as was the 1888 form, for general use by all ratepayers with appropriate changes if any were necessary. I agree that it is unlikely that two statements of the same matter would be required of such a company: but the Form (A) in sec. 10 and the sworn statement that these companies are permitted to file under sec. 28 are quite different in their nature, as has been pointed out.

Had the Legislature intended to relieve these companies of the penalty under sec. 15 when amending the Act in 1889 I think the appropriate change in the latter section would have been made. No other penalty applicable to companies was provided then or thereafter for failure to supply the information required for the preparation of the assessment roll, though the 1889 amendment did not relieve them of their obligation to give it and no reason has been suggested for their exemption from that imposed

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by sec. 15. I find nothing in the history of these sections nor in the context in the present Act to indicate that the word "person" in secs. 10, 12, 13 and 15 should be construed otherwise than as defined by sec. 2 and as including firms, companies, associations and corporations.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *C. J. Burchell.*

Solicitor for the respondent: *W. C. Dunlop.*
