1930
*Oct. 15.

CANADIAN UTILITIES LIMITED.....APPELLANT;

AND

THE TOWN OF STRASBOURG.....RESPONDENT.

ON APPEAL FROM THE ASSESSMENT COMMISSION FOR SASKATCHEWAN

Assessment and taxation—Assessment for "special franchise"—Town Act, Sask., 1927, c. 24, s. 413 (6).

Appellant had a special franchise for supply of electric light and power to respondent town. It had only a distribution system within the town, its generating plant being elsewhere. The town assessed the pole line and distribution system at $3,000 and the franchise at $7,000. Appellant contended that, as it had no property in the town except that assessed at $3,000 as aforesaid, the $7,000 assessment on the franchise was illegal, being contrary to s. 413 (6) of the *Town Act*, Sask., 1927, c. 24.

Held (Newcombe J. *dubitante*): The assessment did not violate s. 413 (6). Assessment must be made of the land and, "in addition," of the special franchise according to the method of determination laid down. Any argument that might otherwise be based on "double assessment" was met by the express statutory provision. There was nothing to shew that the assessment at $7,000 for the franchise was not correct or that the assessment had been made on a wrong basis.

APPEAL by the Canadian Utilities Limited from the decision of the Assessment Commission of Saskatchewan dismissing its appeal from the decision of the Court of Revision of the Town of Strasbourg confirming the assessment made by the assessor of said town of the appellant's property situate therein for the year 1929.

On 21st August, 1928, the respondent town, which owned an electric light and power generating plant and distribution system, by agreement sold to the appellant all its property used or acquired for or in connection with it (but excluding the power house building and land) for the price of $12,000, and by agreement on the same date granted to the appellant (subject to the terms and provisions of the agreement) an exclusive franchise for a period of 20 years for the supply of electric light and power to the town. (It was admitted that the franchise so granted was a special franchise within the meaning of the *Town Act*, Sask., 1927, c. 24). The total consideration paid by the appellant to

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Smith and Cannon JJ.

the respondent in respect of the sale and franchise agreements was the said sum of $12,000. The appellant supplies electric light and power to some forty cities, towns and villages in the province of Saskatchewan. Its method of operation is to establish a generating plant in a central town from which transmission lines are built to several towns and villages in which the appellant maintains a distribution system and which are thus supplied from the central plant. Since the said agreements the appellant has been supplying the respondent town with electric light and power from a generating plant situate at the town of Nokomis; it has not had any generating plant within the respondent town but has there a distribution system including poles, wires and transformers.

The assessor of the respondent town proceeded to assess the appellant in respect to its property and franchise within the town for the year 1929. He assessed the " pole line " at $3,000 and the "franchise" at $7,000, making in all $10,000. It is stated in the judgment of the Assessment Commission that " the assessor submitted that in making the assessment of $10,000 he proportioned the amounts as follows: $3,000 to land which represents pole line and distribution system, and $7,000 to the special franchise."

Appeals taken by the appellant to the Court of Revision and then to the Assessment Commission were dismissed. Special leave was granted by the Court of Appeal for Saskatchewan to appeal to the Supreme Court of Canada.

The *Town Act,* Sask., 1927, c. 24, enacts, by s. 410, that, subject to the other provisions of the Act, the municipal and school taxes of the town shall be levied upon (1) lands; (2) businesses; (3) income; and (4) special franchises. Sec. 413 provides the mode of assessing land and businesses, and also, by subsecs. 6 and 7, enacts as follows:

(6) The owner of a special franchise shall not be assessed in respect of business or income in respect of such franchise, but in addition to an assessment on land shall be assessed for the actual cost of the plant and apparatus less a reasonable deduction for depreciation.

(7) No person who is assessed in respect of any business or special franchise or of any income derived therefrom shall be liable to pay a licence fee to the town in respect of the same business or special franchise.

" Land " is defined in s. 2 (12) as follows:

" Land " includes lands, tenements and hereditaments and any estate or interest therein, or right or easement affecting the same; and

(*a*) buildings or parts of buildings, structures, machinery or fixtures, erected or placed upon, in, over, under, or affixed to, land; and

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(b) structures or fixtures erected or placed upon, in, over, under, or affixed to, any highway, lane or public place or water, but not the rolling stock of a railway, electric railway, tramway or street railway;

"Special franchise" is defined in s. 2 (27) as follows:

"Special franchise" means every right, authority or permission to construct, maintain or operate within the town in, under, above, on or through any highway, road, street, lane, public place or public water within the jurisdiction of the town, any poles, wires, tracks, pipes, conduits, buildings, erections, structures or other things for the purposes of bridges, railways or tramways or for the purpose of conducting steam, heat, water, gas, oil, electricity or any property, substance or product capable of being transported, transmitted or conveyed for the supply of water and heat, power, transportation, telegraphic or other service;

"Income" is defined in s. 2 (10).

The appellant did not appeal against the assessment of the pole line at $3,000, and for the purposes of this appeal it was admitted that this was a proper assessment.

It was contended by the appellant that the legislature has laid down an arbitrary mode for the assessment of a special franchise; and the assessment must be restricted as provided in ss. 6 of s. 413; and, as the "pole line" (which, it was submitted, was "land" within the meaning of the Act, but whether treated as land or as plant and equipment was immaterial, as the result would be the same) was the only property which the appellant had within the town, and as this had been assessed at $3,000, the total assessment should have been $3,000 and no more.

E. C. Leslie for the appellant.

No one appeared for the respondent.

At the close of the argument of counsel for the appellant, the members of the Court retired for consultation, and on their returning to the Bench, the Court orally delivered judgment, dismissing the appeal without costs.

ANGLIN C. J. C.—The majority of the Court is of the opinion that this appeal fails.

In the first place, the appeal is confined to one ground only,—ground no. 2 in the appellant's appeal to the Assessment Commission, viz: that "the assessment of the franchise was not made in accordance with the provisions of the *Town Act*." Ground no. 3 (that "the value placed upon the franchise for assessment purposes was excessive"), was abandoned below and was not urged here.

As to ground no. 2, as we read the statute, assessment must be made both of the land and of the special franchise.

Then, as the majority of us think, the statute proceeds clearly to determine how the assessments are to be made; and, as to a "special franchise," it must be assessed at the actual cost of the plant and apparatus, less a reasonable deduction for depreciation. The fact that the poles (which apparently constitute the chief, but not necessarily the sole, plant and apparatus in the town) may have already been taken into account as part of the land assessed at $3,000 is beside the question, the statute directing that the special franchise shall be assessed "in addition" and that for the purpose of ascertaining its value the assessor shall take the actual cost price of the plant and apparatus less a reasonable deduction for depreciation. The express provision of the statute answers any argument which might otherwise be based on "double assessment." The actual cost of the plant and apparatus (including franchise) was $12,000, plus expenditures subsequently made by the company in replacements and renewals, etc. There is nothing to show that the assessment at $7,000 for the "special franchise" is not correct, or that that assessment has been made on a wrong basis.

That being so, the appeal fails, and must be dismissed.

NEWCOMBE J.—I am not satisfied that the statute has made clear how the assessment in respect of the franchise is to be ascertained. I think it improbable that it was intended that the cost of the land should figure twice in the assessment; and, with all due respect, I am not at all persuaded that the result which my Lord, the Chief Justice, has reached is borne out by the words of the Act. It is the duty of the authority which urges the tax to establish that it is imposed with reasonable clearness; and I am not satisfied—I shall not dissent, because the respondent has not been heard, and my learned brothers are in agreement with the opinion that has been expressed,—but I may say that I am very doubtful about it.

The other members of the Court concurred with Anglin, C. J. C.

ANGLIN C. J. C. (After discussing with counsel the matter of costs).—The appeal is dismissed without costs.

Appeal dismissed without costs.

Solicitors for the appellant: *MacPherson, Leslie & Paul.*
Solicitor for the respondent: *A. A. Peters.*