THE CANADIAN NORTHERN RAILWAY COMPANY (PLAINTIFFS) ..... APPELLANTS;

AND

THE CITY OF WINNIPEG (DEFENDANT) ..... RESPONDENT.

1916
*Oct. 24.
1917
*Feb. 6.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Statute — Construction — Application — Taxation — Exemption — Railway property—Frontage lots — Local improvements, 63 & 64 *V. c.* 57, *s.* 18; *c.* 58, *s.* 22 (*Man.*)—*R.S.M.*, 1902, *c.* 166—10 *Edw. VII., c.* 74 (*Man.*).

By the "Railway Taxation Act," ch. 57, sec. 18, 63 & 64 Vict. (Man.), it was provided that every railway company subject to the Act should be free and exempt from all taxation of every nature and kind within the province except that imposed under its provisions. By ch. 58 of the same session of the legislature, ch. 57 was amended by adding section 22 thereto which provided that nothing therein should deprive any city corporation of any power it had to levy taxes on the real property of a railway company fronting on any street for local improvements. The two Acts were assented to and came into force on the same day. In 1901 an agreement, confirmed by statute, was entered into between the Manitoba Government and the Canadian Northern Ry. Co. by which the Government agreed to guarantee the company's bonds, the company to pay a percentage of its gross earnings to the Government and to be exempt from taxation provided for by section 18 of ch. 57. The "Railway Taxation Act" of 1900 became ch. 166 of the Revised Statutes of Manitoba, 1902, secs. 18 and 19 being identical with sec. 18 of ch. 57 and sec. 22 of ch. 58 respectively. In 1910 the Act 10 Edw. VII., ch. 74 was passed. Sec. 1 provided "sec. 18 of ch. 166 R.S.M., 1902, being 'The Railway Taxation Act' is hereby further amended by adding, etc.;" sec. 2 "for the removal of doubt respecting the exemption from taxation granted under clause 16 of the agreement" (of 1901

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

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above mentioned) "it is declared that the exemption so granted was and is the exemption specified in section 18 of the said 'Railway Taxation Act' existing at the date of the passage of such last mentioned Act and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto." Under the foregoing legislation the City of Winnipeg assessed frontage lots of the Canadian Northern Ry. Co. for local improvements.

Held, per Fitzpatrick C. J. that though it is reasonably clear that the reference to sec. 18 in the Act of 1910 was intended for sec. 18 of ch. 57 passed in 1900 yet the language used will not admit of a doubt that ch. 166, R.S.M. 1902, sec. 18 is really referred to and under that Act the company is not exempt from taxation for local improvements. Duff and Anglin JJ. contra.

Per Davies and Idington JJ.—Sec. 18 of ch. 57 and sec. 22 of ch. 58 must be read together and as if the latter had been made a part of ch. 57; so construing them the exemption of the company from taxation does not cover taxes for local improvements the right to impose which is preserved by sec. 22.

Per Duff J., dissenting.—The "Railway Taxation Act" R.S.M. 1902, ch. 166, referred to in the Act of 1910, was passed in 1900 (ch. 57), and not repealed and re-enacted in 1902. Ch. 58 of the Act of 1900 was an amendment passed concurrently with or subsequently to ch. 57 and does not affect the exemption given by the agreement of 1901; and, therefore, by the express terms of the Act of 1910, the principle of *Salmon* v. *Duncombe* (11 App. Cas. 627), applied.

Per Anglin J., dissenting.—The reference in sec. 2 of the Act of 1910 to sec. 18 of the "Railway Taxation Act" meant sec. 18 of the original Act of 1900, ch. 57, and the exemption given by the agreement was not affected by the provisions of ch. 58 amending same.

In 1910 a special survey, under the "Special Survey Act," was made of certain lots, including those in question, belonging to the railway company and each lot was charged with a proportionate share of the cost of the survey.

Held, Duff J., dissenting, that the charge so made was taxation and not being a tax for a local improvement the company was exempt from payment.

Judgment appealed from (26 Man. R. 292), affirmed.

APPEAL from a decision of the Court of Appeal for Manitoba(1), reversing in part the judgment at the trial in favour of the plaintiffs.

The appellant company was assessed by the City

(1) 26 Man. R. 292.

of Winnipeg for local improvements in respect to frontage lots and, having failed to pay, the lots were sold for such taxes. In order to prevent the issue of a certificate of title the company then paid the taxes under protest and brought an action to recover back the amount and another sum charged on the lots as its proportion of the cost of a special survey. The trial Judge, who heard the cause on a case stated by the parties, held that all the taxes were illegally levied and gave judgment for the plaintiffs. The Court of Appeal reversed his judgment as to the local improvement taxes and affirmed it in respect to the special survey rates. The legislation on which these judgments were based is set out in the headnote. Both parties appealed to the Supreme Court of Canada.

Tilley K.C. for the appellants and cross-respondent. A rate for local improvements is a tax within the exemption provided by the agreement of 1910: *City of Halifax* v. *Nova Scotia Car Works Co.*(1).

The charge on the land for the special survey is also taxation: *Ecclesiastiques de St. Sulpice* v. *City of Montreal*(2), at page 403.

T. A. Hunt K.C. for the respondent and cross-appellant. Chapters 57 and 58 of the Acts of 1900 must be read as one statute: *Canada Southern Railway Co.* v. *International Bridge Co.*(3), at page 727.

Personal statutes conferring special privileges are construed strictly against the beneficiaries: *Sion College* v. *Mayor of London*(4).

On the cross-appeal *Nova Scotia Car Works* v. *City*

(1) [1914] A.C. 992.
(2) 16 Can. S.C.R. 399.
(3) 8 App. Cas. 723.
(4) [1901] 1 K.B. 617.

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of Halifax(1); *Ponton* v. *City of Winnipeg*(2), and *McLellan* v. *Assiniboia*(3), were cited.

THE CHIEF JUSTICE.—This case must be governed by the last statute, *i.e.*, "the Act to amend the 'Railway Taxation Act,'" 10 Edw. VII., ch. 74. The first section of the Act declares that

> section 18 of ch. 166 of the Revised Statutes of Manitoba, 1902, being the "Railway Taxation Act" is

amended as thereby provided. Section 2 declares that the exemption granted to the appellant by the agreement of 11th February, 1901, is

> the exemption specified in section 18 of the said "Railway Taxation Act" as existing at the date of the passage of such last mentioned Act and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto.

As stated by Richards, J.A.:—

> If we are as hitherto to read the section as referring to the Act of 1900 notwithstanding that ch. 166 of the Revised Statutes of 1902 is mentioned then the respondent is exempt. That this was what the Legislature intended need not be doubted but perhaps nothing but an amending statute can carry out the intention. It does not seem to be a question of construction of the Act, the words of which are not equivocal. The trouble is that the words of the Act are reasonably clear, only they do not carry out the intention of the Legislature.

Mr. Tilley admitted at the argument that the exemption granted is in terms not that of the Act of 1900 but that

> specified in sec. 18 of the said "Railway Taxation Act"

(*i.e.*, ch. 166 of the Rev. S.M. 1902). This would have been the Act by virtue of the "Interpretation of Statutes Act," R.S.M. 1902, ch. 89, sec. 8 (*b*), even if ch. 166 had not been mentioned. But he said it is reasonably clear that the Act of 1900 was meant which may be conceded.

(1) 47 Can. S.C.R. 406. (2) 41 Can. S.C.R. 18.
(3) 5 Man. R. 265.

It is argued that if the Revised Statutes had been intended the addition of the words

as existing at the date of the passage of such last mentioned Act

would have been superfluous and meaningless and that the only conceivable purpose of their insertion was to make clear the application of section 7 of the "Act Respecting the Revised Statutes." This apparently concedes that without the addition of these words, section 7 of the "Act Respecting the Revised Statutes" would not have had its application. May not the purpose of their insertion have been precisely to prevent the application which section 7 would have had if they had not been inserted. If the legislature had really intended section 18 of the Revised Statutes of 1902, could it have expressed more clearly an intention to prevent the operation of section 7 of the "Act Respecting the Revised Statutes" than by the addition of the words

as existing at the date of the passage of such last mentioned Act

(*i.e.*, the Revised Statutes of 1902).

It seems a forced construction in any case this calling in aid section 7 of the "Act Respecting the Revised Statutes." What that Act says is that where the provisions of the repealed Act and the Revised Statutes are the same they shall be held to operate retrospectively as well as prospectively; this is a very simple provision and one that hardly seems capable of being invoked to prove that the repealed Act must be that referred to in section 2 of the Act of 1910.

It is reasonably clear what the legislature said and also what it intended; further that it did not say what it intended and that without disregarding the words of the statutes it is difficult to give effect to the intention.

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Although a statute is to be construed according to the intent of them that made it, if the language admits of no doubt or secondary meaning it is simply to be obeyed. As Lord Watson said in *Salomon* v. *Salomon & Co.*(1), at page 38:—

> In a court of law or equity what a legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implication.

This appeal should be dismissed with costs.

DAVIES J.—This appeal involves the proper construction of several Acts of the Legislature of Manitoba relating to the taxation of railways in that province and specially with respect to the power of incorporated cities to collect frontage taxes for local improvements on railway lands.

I agree with the judgment appealed from affirming that power and right and negativing the right claimed by the respondents in addition of levying on the railway lands and collecting what was called a special survey tax.

The reasoning of Chief Justice Howell, concurred in by Perdue, Cameron and Haggart JJ.A., commends itself to me as being sound and reasonable.

In the session of the legislature of 1900 there was passed a statute, ch. 57 of the statutes of that year, called the "Railway Taxation Act," imposing upon railway companies owning or operating any line or lines of railway within the province a tax of 2% upon the gross earnings of such railway companies on its lines within the province in the years 1900, 1901 and 1902, and after that, a sum to be fixed by the Lieuten-

(1) [1897] A.C. 22.

ant-Governor in Council not to exceed 3% of such gross earnings. The 18th section of that statute declared railway companies coming within and paying taxes under its provisions to be

free and exempt from all assessments and taxation of every nature and kind within the Province of Manitoba by whomsoever made or imposed, except such as are made and imposed under the provisions of this Act.

At some period of the session it was found that the language of this exemption clause was too sweeping and went further than was intended and another statute, ch. 58, was passed concurrently with that containing the exempting clause enacting that

the "Railway Act" passed at the present session of the Legislative Assembly is hereby amended by adding thereto the following section:—

22. Nothing herein contained shall take away from any incorporated city any right or power which any incorporated city may now have of assessing and levying on the real property of any railroad company fronting or abutting on any street or place, taxes for local improvement done, in, under or upon any such street or place according to the frontage of such real property so fronting or abutting on such street or place or relieve any railway or telegraph company owning or operating a telegraph line or lines in the province from the payment of the taxes imposed in that behalf under the provisions of the "Corporations Taxation Act."

The two Acts constituting in reality one were assented to by the Lieutenant-Governor together and, in my judgment, should be read together; otherwise the plain, obvious intent and purpose of the legislature not to deprive cities of the right and power of levying taxes for local improvements on railway companies as well as on other owners of lands would be defeated. Read together they preserve this right and power unto these cities and unless subsequent legislation has taken them away they should be maintained.

In the following year, an agreement dated the 11th February, 1901, was entered into between the Manitoba Government and the appellant company guaranteeing the payment of certain railway bonds of

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the appellant by the Province of Manitoba in which the company covenanted up to the maturity of the bonds so to be guaranteed, to pay to the Government a sum not exceeding two per cent. of its gross earnings from its lines in Manitoba and in consideration of such payments it was agreed that

> their properties, incomes and franchises shall be exempt from such taxation as is provided for by section 18 of ch. 57 of the Statutes of Manitoba of 1900 during the currency of the said bonds hereby agreed to be guaranteed.

Now, strictly speaking, no taxation was "provided for" in this section 18, but exemption from such taxation as they would be otherwise liable for. What was therefore the law at the end of the session of 1900 when the above two mentioned statutes were passed and on the 11th February, 1901, when this agreement was made?

Can it be doubted that this section 18 of ch. 57 was to be read and construed as if the amending or declaratory contemporaneous Act with the section named as section 22 had actually formed one of its sub-sections?

In law, I think it did form one of its sub-sections and was to be read and construed as one and that when the agreement in question of the 11th February, 1901, was entered into declaring the appellant company exempt

> from such taxation as is provided for by section 18 of ch. 57 of the statutes of 1900,

it meant section 18 as modified by section 22 and such exemption did not extend to or embrace local improvement taxes from which the legislature had already declared they were not exempt. These frontage taxes for local improvements which that 22nd section of same Act as amended in the same session explicitly

declared railway companies should not be relieved from are those we are now asked to declare the company should be relieved from.

In the Revised Statutes for 1902, ch. 166, this legislation is re-enacted, section 22 being made section 19, following section 18 which remains numbered as before in the "Railway Taxation Act."

But then it is said, assuming that to be so, subsequent legislation in 1910 sets the question definitely at rest as to the meaning of clause 16 of the agreement of February 11, 1901, and exempts the company from liability from local improvement taxes as well as general taxes. That legislation is embodied in 10 Edw. VII. (1910), ch. 74.

It makes no direct or specific reference to the local improvement taxes but enacts generally for the removal of doubt respecting the exemption from taxation granted under section 16 of the agreement of 1901 which agreement was validated and confirmed by statute that

> the exemption so granted was and is the exemption specified in section 18 of the said "Railway Taxation Act" as existing at the date of the passage of such last mentioned Act, and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto.

Now at this time and ever since 1902 sec. 22 of the "Railway Taxation Act" had formed section 19 of ch. 166 of the Revised Statutes and if it was intended to repeal that section and exempt the railway from local improvement taxes it was not difficult to say so in a few words. It will be noticed that this legislation declares the exemption so granted was and is the exemption specified in section 18. I have already given my reasons for holding that this section 18 must be read together with section 22 to determine its true meaning and that latter section expressly declared that

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nothing in that railway Act contained should take away from any city the right to tax for local improvements or relieve any railway from the payment of such taxes.

The Act of 1910, which is relied upon as effecting such exemption, merely declares in general terms that the exemption granted by clause 16 of the agreement of 1901 confirmed by ch. 39 of the statutes of that year was and is the exemption specified in section 18 of the "Railway Taxation Act" as existing at the date of the passage of such last mentioned Act. We are asked to say that the meaning of section 18 must be found within its own ambit and without reference to sub-section 22 which, in my opinion, formed part of it, though enacted in a separate chapter and withdrew local improvement taxes from its operation. I decline doing so because it would be bad construction.

I have already given my reasons for holding that at the date of the passage of the "Railway Taxation Act" of 1900 the right of the cities to levy and assess railways for local improvements was retained to them and these special taxes were not amongst those from which the railways were exempted and I think the legislation of 1910, though no doubt intended by the promoters to effect that exemption, failed because of the vague and uncertain language used.

If the legislature intended to exempt the railways from these local improvement taxes in 1910 they could have expressly said so in a few words.

In 1900, when they desired to continue the liability of the railways for these taxes the intention was clearly expressed in section 22 of the Act. In 1902 when the statutes were revised that intention was expressly re-enacted.

I do not think legislation so clear and explicit, mentioning local improvement taxes specifically, should

be held to have been repealed by such vague and general words as the promoters of the Act of 1910 have used carefully avoiding the mention of those local improvement taxes.

Shortly re-stated my conclusion is that section 22 must be read into the "Railway Taxation Act" of 1900 as if it formed one of the sections of that Act and that its being enacted as a separate chapter of the same session's legislation makes no difference. That the meaning and intent of section 18 when read in conjunction with sub-section 22 clearly does not include local improvement taxes amongst those exempted. That the subsequent revision of the statutes in 1902 makes that still more clear and that it would require equally clear and plain language to be used to reverse that legislation and exempt railways from local improvement taxes and thus throw heavier burdens upon the other owners of lands liable for such taxes; that the language of the Act of 1910 is altogether too vague and uncertain to effect that object; and there therefore never was a time when the appellant company was exempt from local improvement taxes.

With respect to the special survey charges I agree with the decision of the Court of Appeal.

I would therefore dismiss both appeal and cross-appeal with costs in each.

IDINGTON J.—Inasmuch as the expression used in the agreement in question by way of incorporating therein section 18 referred to does not when read therewith produce anything quite clear and unambiguous, I am driven to try and make of it something that is apparently what the contracting parties meant.

The part of the agreement which adopts for its

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definition of an exemption from such taxation as provided by a section which is in itself largely an exempting section instead of one directly providing for taxation, seems calculated to present a set of puzzles.

Surely whatever else was intended to be agreed to and thereby adopted, it must have been the substantial legal effect of section 18 as it stood amended at the date of the agreement.

I conclude that is the fair interpretation and that the judgment of the court below should be maintained for that reason and the reasons assigned therefor by Chief Justice Howell.

The appeal should be dismissed with costs.

I am unable to comprehend why a municipality should so persist in its wrong-doing and seek to escape from the consequence of its acts as respondent does in regard to the costs it put appellant to. As the payments were made under protest the conception covered by a voluntary payment cannot help it.

The survey tax was covered by the phrase "by whomsoever imposed" in section 18.

The cross-appeal should also be dismissed with costs.

DUFF J. (dissenting).—With respect I am unable to concur in the conclusion of the Court of Appeal for Manitoba.

The point raised on the main appeal is, in my judgment, concluded by section 2 of ch. 74 of the statutes of 1910, which is in the following words:—

For the removal of doubt respecting the exemption from taxation granted under clause 16 of the Agreement dated the eleventh day of February, 1901, set out in schedule "A" to chapter 36 of the statutes passed in the year 1901, it is declared that the exemption so granted was and is the exemption specified in section 18 of the said "Railway Taxation Act" as existing at the date of the passage of such last men-

tioned Act, and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto.

The enactment must of course be read and construed in light of the circumstances with reference to which it was passed; and, to apply the principle on which the Judicial Committee of the Privy Council proceeded in *Salmon* v. *Duncombe* (1), at p. 634, it must not be given a construction which makes it nugatory or insensible with reference to those circumstances unless such a construction is forced upon us by the "absolute intractability" of the language used.

First, then, what is it that the legislature is dealing with in this section? It is dealing with clause 16 in a certain agreement dated the 11th February, 1901, confirmed and validated by ch. 39 of the statutes of that year and the enactment has specific reference to a certain provision in that clause 16 by which it is stipulated that the

> property, incomes and franchises of the company,

that is to say of the now appellant company,

> shall be exempt from such taxation as is provided for by section 18 of ch. 57 of the Statutes of Manitoba of 1900.

It has explicit reference to this stipulation and it was passed "for the removal of doubt respecting" the meaning and effect of the stipulation. What was the nature of the doubt that had arisen? In order to make that clear let us reproduce textually section 18 of ch. 57 of the statutes of 1900. That enactment is in the following words:—

> 18. Every railway company coming within and paying taxes under the provisions of this Act or any Act or Acts amending this Act, and the property of every nature and kind of every such railway company, except the land subsidy to which such company is or may be entitled

(1) 11 App. Cas. 627.

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from the Dominion Government, and any land held by it for sale, shall, during the continuance of this Act, or any Act or Acts amending this Act be free and exempt from all assessments and taxation of every nature and kind within the Province of Manitoba by whomsoever made or imposed, except such as are made and imposed under the provisions of this Act, or any Act or Acts amending this Act, and no person or body corporate or politic having power to make assessments or impose taxation of any kind shall during the continuance of this Act or any Act or Acts amending this Act make any assessment or impose any taxation of any kind of or upon any such railway company or any property of such railway company except the land subsidy to which such company is or may be entitled from the Dominion Government and any land held by it for sale as aforesaid.

The field in which the exemption hereby created is to operate, it will be observed, is limited by an exception, the exception being such assessment and taxation

as are made and imposed under the provisions of this Act or any Act or Acts amending this Act;

and it is upon the scope of this exception that the dispute had arisen. It was occasioned by these circumstances. In the very same year, the year 1900, the legislature passed an Act, ch. 58, amending ch. 57 (which was intituled "Railway Taxation Act") introducing an additional section, sec. 22, as part of that Act and by this last mentioned section introduced by this amending Act (ch. 58) it was declared that nothing contained in the Act (*i.e.*, nothing contained in ch. 57 of the "Railway Taxation Act") should take away any right or power which an incorporated city "may now have" of assessing and levying on any property of a railway company taxes for local improvements. The argument against the railway company, and it certainly was not without force, was that this section introduced as section 22 by way of an amendment brought within the sweep of the exception from the exemption created by section 18, taxes for local improvements so assessed and levied; this consequence

resulting, it was argued, from the fact that the exception embraces taxation imposed under the

provisions of this Act or any Act or Acts amending this Act,

taxation imposed under section 22 being taxation imposed under an "Act amending this Act;" and that consequently the exemption from taxation stipulated for by clause 16 of the agreement of February, 1911, which was to be an exemption from such taxation

as is provided for by sec. 18 of ch. 57 of the statutes of Manitoba of 1910

must be held to be subject to an exception embracing taxation for local improvements under section 22. This then was the point in dispute. Did the stipulation which was entered into in February, 1910, defining the exemption to which the company should be entitled, exclude from the scope of that exemption the sort of taxation authorized by section 22 introduced by the amending Act, (ch. 58, statutes of 1900) or did it confer an exemption, the scope of which was to be determined by an examination of section 18 alone without regard to the amending statute?

That being the point in dispute and the Act of 1910 being passed for the sole purpose of settling the controversy, how does the enactment of 1910 deal with the subject? The declaration of section 2 seems, when the circumstances just mentioned are considered, to be too explicit for misapprehension. The exemption intended to be created is to be the exemption specified in section 18 of the "Railway Taxation Act," that is to say, of ch. 57 of the statutes of 1900, and it is further declared that the exemption is

unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto.

Comment would appear to be superfluous. The dispute being whether or not for the purpose of ascer-

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taining the scope and character of the exemption, section 18 of ch. 57 of 1900 and section 22 introduced by ch. 58 of 1900 are to be read together or section 18 is to be read alone and ch. 58 disregarded—such being the nature of the controversy—can there be any doubt about the effect of this language of section 2 of the Act of 1910? Ch. 58 beyond question is an Act "amending this Act" (ch. 57) passed concurrently with or subsequently to it. Ch. 58 is therefore to be excluded from our purview when considering the effect of section 18.

It is argued on behalf of the respondent that "Railway Taxation Act" must be taken to have been the "Railway Taxation Act" of Revised Statutes of Manitoba, 1902, which, it is said, was passed in 1902. The answer to that is that the "Railway Taxation Act," ch. 166, R.S.M. 1902, was in truth passed in the year 1900, and was not repealed and re-enacted in 1902, as sufficiently appears from section 1, sub-secs. 1, 6, 7, 8, of the statutes of 1902, ch. 41, the "Act Relating to the Revised Statutes." But there is the additional reason that the construction proposed derives the intention of the Act of 1901 and the agreement confirmed by it from the provisions of a statute passed a year later; and the still further reason that it deprives the governing words of section 2, those relating to amendments, of all effect, and instead of removing doubts leaves the dispute exactly where it was; in other words it makes the statute nugatory as regards its declared object, the "removal of doubt."

A much more difficult question arises on the cross-appeal. It is difficult to believe that the legislature had in contemplation such charges as those provided for by ch. 182 R.S.M., 1913. On the other hand much may be said for the view that these charges are

within the same category for the purposes of deciding this question as charges for local improvements. The point is a disputable one, but on the whole my conclusion is this: The amount chargeable (if not the question whether any amount at all shall be charged) against a specific property included in the survey is an amount not fixed by the reference to any rule prescribed by law but rests in the discretion of a public officer; and I think the charge falls rather within the class of imposts which would include the costs of works required by a Board of Railway or Municipal Commissioners assessed against a municipality or a railway company, which class of imposts would not according to the common notions of Canadian mankind come under the description "taxes;" and I think common usage should be a guide in construing such agreements as that before us.

Such expressions as that quoted from Strong J. (*St. Sulpice* v. *City of Montreal*(1), by the Chief Justice of Manitoba—

> every contribution to a public purpose imposed by superior authority is a "tax" and nothing less

—must not, I think be taken too absolutely; they are not intended as definitions but as descriptions emphasizing the characteristic brought into relief by the controversy in relation to which they are employed.

ANGLIN J. (dissenting).—By an agreement made in 1901 with the Government of Manitoba, confirmed by statute, the Canadian Northern Railway Company was granted an exemption during the currency of certain bonds from the taxation dealt with by section

(1) 16 Can. S.C.R. 403.

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18 of the "Railway Taxation Act" of 1900, ch. 57. That section exempted railway companies and all their property, except the Dominion Government land subsidy and land held for sale, from "all assessments and taxation of every nature and kind" except such as are made and imposed under the provisions of the "Railway Taxation Act" itself or any amending Acts. By an Act also passed during the session of 1900, but as a separate statute (ch. 58), there was added to the "Railway Taxation Act," as section 22, a declaratory clause providing that nothing therein contained should take away from any incorporated city the right to assess and levy taxes for improvements on real property of any railway company fronting or abutting on any street or place in, under or upon which such improvements should be done. In 1902 there was a revision of the statutes of Manitoba. In the "Railway Taxation Act" in that revision (ch. 166) section 18 is reproduced as it was in the Act of 1900 and the amending declaratory provision above referred to appears as section 19. A statute was passed in 1910, as ch. 74, in the following terms:—

1. Section 18 of ch. 166 of the Revised Statutes of Manitoba, 1902, being the "Railway Taxation Act," is hereby further amended by adding at the end thereof the following words, "and except all lands and property held by the company not in actual use in the operation of the railway."

2. For the removal of doubt respecting the exemption from taxation granted under clause 16 of the Agreement dated the eleventh day of February, 1901, set out in schedule "A" to ch. 59 of the statutes passed in the year 1901, it is declared that the exemption so granted was and is the exemption specified in section 18 of the said "Railway Taxation Act" as existing at the date of the passage of such last mentioned Act, and is unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto.

Notwithstanding the reference to ch. 166 of the Revised Statutes of Manitoba, 1902, in sec. 1 of this enactment, it seems to me reasonably clear that by

section 18 of the "Railway Taxation Act" mentioned in section 2 was meant section 18 of the original Act of 1900, and that by the words

unaffected by any amending Act or Acts passed concurrently therewith or subsequently thereto,

it was intended to exclude the amendment of 1900 which afterwards became sec. 19 of the "Railway Taxation Act" of 1902. By sec. 7 of the Act respecting the Revised Statutes (3 Edw. VII., ch. 41), to which Mr. Tilley directed our attention, it is enacted that the provisions of the Revised Statutes of 1902 corresponding to and substituted for provisions of repealed Acts, where they are the same as those of the Act so repealed, shall be held to have been passed on the days respectively upon which the Acts so repealed came into effect. By

the date of the passage of such last mentioned Act

(*i.e.*, the "Railway Taxation Act") in section 2 of ch. 74 of the statutes of 1910 above quoted, is therefore meant not the date of the coming into effect of the Revised Statutes of 1902 but that at which ch. 57 of the statutes of 1900 (the repealed Act) came into force; and

the exemption specified in section 18

as contained in that Act, "unaffected by the amendment passed concurrently," and found in ch. 58, is the exemption to which section 2 of the Act of 1910 declares the appellant company entitled. Of course this might readily have been made clearer and this litigation avoided had the Act of 1910, passed "for the removal of doubt"(!) referred directly to "the exemption specified in section 18 of ch. 57, 63 & 64 Vict., unaffected by section 1 of ch. 58, 63 & 64 Vict., instead of to that

specified in section 18 of the said "Railway Taxation Act"

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(*i.e.*, ch. 166 of the R.S.M., 1902). But if it had been intended to declare the right of exemption to be that provided by section 18 of the "Railway Taxation Act" as found in the Revised Statutes (*i.e.*, subject to the declaratory provision of sec. 19) the addition of the words

> as existing at the date of the passage of such last mentioned Act

would have been superfluous. The only conceivable purpose of their insertion in sec. 2 of the Act of 1910 was to make clear the application to it of section 7 of the "Act Respecting the Revised Statutes." Moreover, as applied to the Revised Statutes of 1902, the words

> unaffected by any amending Act * * passed concurrently therewith

would have no point. There was no amendment to the "Railway Taxation Act" in 1902 or 1903. They were obviously and aptly used in reference to the legislation of 1900, ch. 58. Notwithstanding the unhappy phraseology of section 2 of the Act of 1910, on a careful consideration of all this legislation it appears to me to express with sufficient certainty the intention of the legislature to exempt the Canadian Northern Railway from — to use the language of section 18—

> all assessments and taxation of every nature and kind,

except taxation made and imposed under provisions of the "Railway Taxation Act" and amending Acts.

Counsel for the respondents sought to bring local improvement rates within this exception by treating the declaratory clause, added by amendment as section 22, as an amending Act by which assessments and taxation were made and imposed. I am unable to accept that view of the scope and effect of section 22. Its provisions are negative. They do not provide for the making or imposition of any tax but merely declare that other provisions of the "Railway Taxation Act"

shall not take away a right or power to assess and levy taxes for local improvement rates conferred by other legislation. It is by, or by virtue of such other legislation that local improvement taxation is imposed. I would therefore allow the appeal of the Canadian Northern Railway Company.

As to the cross-appeal, I am of the opinion that the cost of surveys authorized by the legislature to be assessed upon the property affected is assessment or taxation within the meaning of the exemption provided for by section 18 of the "Railway Taxation Act," provincial and not municipal taxation it may be, but nevertheless taxation: *City of Halifax* v. *Nova Scotia Car Works, Ltd.*(1), at page 998—"a demand of sovereignty," *State Freight Tax Case*(2), at page 278. As to the percentage added to the taxes and the cost of making title which the appellants were obliged to pay in order to redeem their property and prevent the issue of a certificate of title to it to the tax sale purchaser, cancellation of which they might have been unable afterwards to procure, I see no reason why these should not be refunded to them as well as the taxes themselves to which they were incidental. In view of the terms in which the special case has been submitted the plaintiffs are, in my opinion, entitled to a judgment against the defendant municipal corporation for the refund by it of the whole amount paid to it to prevent certificates of title for the lands wrongfully sold being issued, with interest thereon from the date of such payment. They should also have their costs of this litigation throughout.

Appeal and cross-appeal dismissed with costs.

Solicitors for the appellants: *Clark & Jackson.*
Solicitor for the respondent: *Theodore A. Hunt.*

(1) [1914] A.C. 992. (2) 15 Wall. 232.