

YORK COUNTY COURT. } [AUG. 6.
McDOUGALL, Co. J. }

CITY OF TORONTO v. TO-
RONTO RAILWAY CO.

*Municipal Assessment—Street Railway
—Wires and Poles Assessable—Right
of Appeal.*

I have considered the objection raised in this appeal by Mr. Laidlaw, viz., that the right to appeal from the decision of the Court of Revision, provided for by section 68 of the Assessment Act, is conferred only upon the person assessed, or sought to be assessed, and is not open to the municipal corporation who assessed or omitted to assess the person or corporation complaining before the Court of Revision. To hold that when the legality of an act done by the municipal corporation has been questioned before the Statutory Court the decision of that Court cannot be reviewed at the instance of the corporation whose act is impeached, but may be questioned by the original complainant only, is repugnant to common sense and common justice. It would require express words of limitation to that effect to induce me to construe so narrowly a general clause giving a right of appeal against a decision of the Court of Revision. Section 68 says an appeal to the County Judge shall lie not only against a decision of the Court of Revision, but also against the omission, neglect or refusal of the said Court to hear or decide the appeal. It is urged that the limitation contained in section 76, confining the right of appeal to a Board of Judges to the person assessed, should be looked at as showing the intention on the part of the Legislature to limit the right of appeal, under section 68, to the party assessed.

The insertion of this limitation in section 76 appears to me to be rather an argument the other way, for without that limitation it is clear that the appeal to the Board of

Judges could be open to either party to the original complaint before the Court of Revision. But this special Court for the hearing of particular appeals has no general jurisdiction to hear all appeals. It can be called into existence only, the Legislature says, if the person assessed desires it. It is a special right given to assessed persons, but it in no way affects the rights and privileges created by section 68, save where the amount involved is a certain sum and the person assessed alleges himself to be aggrieved. All other cases remain to be dealt with under the provisions of section 68. The Board of County Judges is therefore an alternate court of strictly limited jurisdiction. If not invoked *sub modo*, the County Judge possesses sole appellate jurisdiction; but the appeals he is directed to hear and determine are appeals against the decisions of the Court of Revision.

The person in whose favor the Court of Revision has decided cannot appeal; but the opposite party, or the person who has been unsuccessful in his contention before the Court of Revision, is the person entitled to appeal. Sub-section 6 of section 7a in the Assessment Act is a clause which clearly indicates this to be the intention of the Legislature. Section 7a deals with matters of special exemption of farm lands from certain local improvement taxes, and with by-laws to be passed in connection therewith, and giving a direct appeal to the County Judge in case the party assessed deems he is not fairly dealt with by the by-law. It makes, by sub-section 5, the practice and procedure under section 67, sub-sections 3, 4, 5 and 6, all the following sections, 69-74, applicable to appeals under section 7a. But for fear that there might be some doubt raised as to these provisions affecting or superseding the case of by-law appeals, the right to any appeal conferred by section 68, sub-section 6, is enacted, reading: Nothing in the