IN THE THIRD DIVISION COURT OF THE DISTRICT OF RAINY RIVER.

BETWEEN

The Corporation of Fort Frances.

and *Plaintiff*

W. A. Baker *Defendant.*

This action is brought to recover the amount of "Business Tax" for which the defendant is alleged to have been assessed for in 1905.

The defendant disputes payment of the same on the ground that he did not receive any notice of the assessment, and consequently had no chance to appeal therefrom, and further that the amount was not mentioned in his tax bill for that year.

Section 5 of the Assessment Act shows what property is taxable, namely: "All real property in this Province, and all income derived either within or out of the Province by any person resident therein, or received in this Province by or on behalf of any person resident out of the same." And in addition thereto there is a business tax levied under section 10 of the Act which reads as follows: "Irrespective of any assessment of land under this Act, every person occupying or using land in the municipality for the purpose of any business mentioned or described in this section, shall be assessed for a sum to be called a "Business Assessment," to be computed by reference to the assessed value of the land so occupied or used by him."

The sub-sections of section 10 fix the basis of this business assessment according to the nature of the business in which the occupier is engaged, the minimum amount being fixed by sub-section 3 at $250 (in 1905).

Now, as the defendant admits that he was carrying on business as a tailor at the time the assessment was made in 1905, he would be liable for the business tax, and as he was only assessed for $250, the minimum amount of business assessment, he could not even on appeal have had the amount reduced. He, however, claims that he was entitled to notice of his assessment, which he clearly was by section 46 of the Assessment Act, which reads as follows: "The assessor before the completion of the assessment roll of the municipality shall, in manner hereinafter provided, leave for or transmit to every person named in the roll, a notice according to the form given in schedule "F" of the Act, of the sum or sums for which such person has been assessed, and the other particulars in schedule "F" mentioned, and shall enter in the roll opposite the name of the person, the date of delivering or transmitting such notice, and the entry shall be *prima facie* evidence of such delivery or transmission.

While this section clearly points out the duty of the assessor, from which he is not relieved in any way, still by section 66 of the Act, after the roll is finally revised, which was in this case done on the 27th day of July, 1905, it is valid and binding on all parties, notwithstanding any defect or error or omission to deliver or transmit the notice of assessment, unless the party has actually requested the clerk of the municipality in writing, in accordance with sub-section 6 of section 46, that such notice shall be transmitted to him.

Now, while the letters *Ap. 29* appear opposite the defendant's name on the assessment roll in the column marked (date of delivery of notice under section 46), and I am of the opinion upon the evidence that the defendant never received any notice of being assessed for business assessment, which was a new assessment in 1905, still by section 66 the assessment is none the less binding upon the defendant. I am strongly of the opinion that section 66 should be amended so that all parties assessed would not be prejudiced by any neglect or omission of the assessor, but while the law stands as it is, the Court must follow it as they find it.

I therefore must find that the defendant is liable for the amount of said business assessmeut, and as it is the minimum amount he is not much prejudiced by the want of notice, as he might otherwise have been.

The costs, however, being in my discretion, I will not make him pay the costs of this action, for while section 66 makes the assessment binding notwithstanding the want of notice, still it does not in any way exonerate the assessor from the performance of his duty as required by section 46. The defendant swears that he never received any notice, and in support of his contention he produces the assessment notice that he did receive, and his tax notice from the collector, in neither of which is there any business assessment mentioned, and upon that evidence it does appear that the assessor did not serve the notice as required by section 46, and he being a servant of the municipality, the plaintiff must be responsible for his acts or omissions to the prejudice of third parties, although as between themselves he may be responsible, I must add that the assessor was not called as a witness, and therefore there was only the entry in the assessment roll as to service of the notice, which is only *prima facie*, or presumptive evidence at most.

I therefore give judgment for the plaintiffs for $6.29, but without costs for the reasons above given.

T. W. Chapple,

Nov. 6, 1906. Judge.

ARE LUMBER CAMPS NOT ASSESSABLE?

The judges of the Ontario Court of Appeal recently gave their opinions on the appeal from the decision of the Court of Revision by the J. D. Shier Lumber Company, of Bracebridge, who objected to being assessed by the Township of Lawrence on the value of their licenses, camps, slides and dams in the said township. The value put on the Shier property by the township was $17,900. This was confirmed by the county judge of Victoria.

The questions for the opinion of their lordships were:

Are the holders of timber licenses liable to be assessed thereon?

Are lumber camps assessable?

Are the owners of lumber camps assessable to a business tax under the conditions mentioned with respect to the camps only?

Are slides and dams assessable under the conditions mentioned?

Chief Justice Moss and Justices Osler, Garrow and Maclaren answer all the questions in the negative. The learned judges hold that the license, camp outfit, slides and dams are all covered by the sub-section in the assessment Act, which exempts from taxation all Crown interests in lands.

Mr. Justice Meredith takes a contrary view. His Lordship says: "The fifth section of the Act decrees that all land in the Province shall be taxed, this includes the Crown lands in question; but by the first sub-section of that section the 'interest' of the Crown in all lands is made exempt, and this sub-section, therefore, exempts from taxation the whole of the interests of the Crown in the lands in question; and, if such interests comprise everything, the whole of the lands are exempt; but if not, if there is any other interests in the lands, it is taxable, unless otherwise exempted.