Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Re City of Toronto Assessment Appeals.

Judgment on appeal by the city corporation from a decision of the County Judges of York, Halton and Ontario, upon the question of the assessment of the Bell Telephone Company, etc., in respect of their assessments for plant, including wires, poles, etc. Board of County Court Judges reduced the assessments as confirmed by the Court of Revision. The question upon the appeal was whether the Board of Judges were right in deciding that the act 1 Edw. VII. ch. 29, section 2 (O), made no difference in the mode of valuing the rails, poles, wires and other plant belonging to the companies, erected or placed upon the highways, which was held to be proper by the decision in re Bell Telephone Company and City of Hamilton, 25 A. R., 351, and re London Street R. W. Company. Held, Maclennan, J. A., dissenting, that the Board of Judges were right in so deciding. Per Osler, J. A.:—The new clause does no more than enable the assessor to assess their property all together in one ward, or to apportion the assessment among two or more of the wards, as he may deem it convenient. It merely removes one of the difficulties pointed out in the cases before decided, but does not extend the principle on which the value of such property, apart from the franchise of the company or its use to a going concern, is to be ascertained by the application of the rule provided by section 28, of the Assessment Act, for ascertaining its value. It is now to be valued as if it were all in one ward. That is to say, as a whole or as an integral part of a whole, but still without reference to its connection with a franchise or its use as the property of a going concern. The learned chairman of the board, (McDougall, Co. J.,) has given a very full and satisfactory exposition of the new section, to which nothing can be added, except that the decisions by which the Court of Appeal is bound require much more comprehensive legislation to remove their effect than anything which is found in that clause. Per Maclennan, J. A., (dissenting):—The injunction to assess all property at its actual cash value still remains. So does the mode of appraisement as if in payment of a just debt from a solvent debtor. But the obligation to assess in several wards is swept away, and it may be assessed all together in any one ward, or it may be apportioned amongst two or more wards, and in either case it shall be valued as a whole, or as an integral part of a whole. Each of the companies owns, and is assessed for, freehold land in the ordinary sense, as well as for their rails, poles, wires, etc., upon the public streets, and the two kinds of real estate are connected, both in construction and in use, and, taken together, answer the description in the sub-section "real property belonging to....any....incorporated company, and extending over more than one ward in any city," and what the section says is, that it may be assessed together in any one of such wards. That is what has been done here. In valuing the land of the company extending over several wards as a whole, the value of the rails, poles, wires, etc., must be included as a part of the whole. But even if it becomes necessary to value a part of the company's real property separately, as in the case of that part which may be in a township outside of a city or town, where, perhaps, it has no land other than the rails, poles, wires, etc., on the public highways, the result must be the same. It must be the full value of these fixtures to the company, because they must be valued as an integral part of the whole. It plainly means that it is not to be valued without reference to the whole of which it is a part, but as an essential part of the whole—as something without which the whole would be incomplete. It is to be valued, in short, at what it is worth to the debtor, being solvent, as a part of the whole, so that being solvent, he would be willing to let it go at that value in payment of a debt. Appeal dismissed with costs.

Re Township of Nottawasaga and Co. of Simcoe.

Judgment on appeal by the county corporation from order of a Divisional Court dismissing an appeal from an order of Boyd, C, in Chambers, refusing to prohibit the Judge of the County Court of Simcoe from proceeding with the hearing and determination of an appeal by the township corporation from the equalization by the county council of the assessment rolls for the year 1900, of the various municipalities within the county. The motion was made on the grounds that the township had not duly authorized the appeal, because a by-law was necessary for the purpose, and one had not been passed, and that the County Judge had no jurisdiction to proceed with the hearing of the appeal after the 1st August, section 88, sub-section 7, of the Assessment Act, providing that judgment shall not be deferred after that date. Held, that the section is imperative. Per Osler, J.A.:—The object aimed at by the equalization of the assessment rolls is to correct, as nearly as may be, eccentricities and unreasonable differences in assessments as taken in the various local municipalities, so that the incidence of the county rates may be fairly distributed over the whole of the assessable property in the county. The aggregate of the valuation of the various local municipalities appearing upon their assessment rolls as finally revised and corrected is not to be distributed ; what is taken or deducted from the valuation of one is to be placed upon and distributed over the valuations of another of the others, and thus the whole assessment of the county is equalized. The proportion which each municipality is to contribute towards the "county rate" is, therefore, ascertained by the county by-law, to be passed when, and not until, the rolls have been equalized by the council, sections 87 94. For this purpose, as it would appear from section 88, the council need not await the result of an appeal. The rolls for the current financial year could not be utilized, because they may not be finally completed until the first of August, and the township clerk has ninety days thereafter in which to send copies of them to the county clerk. Therefore, as section 87 provides, it is the revised rolls for the preceding financial year which are to be examined and equalized, and it is the amount of the property assessed and valued in these rolls as equalized which forms the basis on which the apportionment of the county's requirements among the various local municipalities is made ; section 91. The appellants rely upon section 8, subsection 2, of the Interpretation Act, which enacts that the word "shall" shall be construed as imperative, but that is subject to the qualifications of section 7 (1), "except in so far as the provision is inconsistent with the intent and object of such act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context." It rests upon the respondents to show that the word "shall" is to be read in section 85, subsections 4 and 7, in the permissive sense, and they have failed to do so. The only substantial argument is that the legislature has given an appeal which may become abortive if, by reason of delay of the parties, or of the time occupied in hearing it, or the delay of the judge in giving judgment after argument, it is not disposed of by the 1st August. But the words of the subsection are in the emphatic negative form, and there is an excepted case, "except as provided in sections 58-61," in which it seems to be implied that judgment may be deferred. The force of this exceptive language as aiding the construction of what follows is not weakened by the fact that it may not be very easy to apply the exception. Then, as to the argument from inconvenience. The rolls have been in fact equalized by the county council. If the appeal drops, the council proceeds upon its own decision, which operates only upon the taxation of the present year. There is no such serious inconveniences involved in the loss of the appeal for a single year as to warrant the court in giving the language of subsection 7 less than its full force and treating it as otherwise than an absolute prohibition against continuing the appeal after the date specified as the last day for giving judgment thereon. Appeal allowed with costs here and below, and order made for prohibition.