Legal Department.

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Another Scrap-iron Judgment

A board of judges composed of judges McDougall of Toronto, McGibbon of Brampton, and McCrimmon of Whitby, re ently handed out their judgment in the appeals of the T oronto Railway Company, Consumers' Gas Company, Bell Telephone Company, Toronto Elect ic Light Company, and Incandescent Light Company regarding the interpretation of the Assessment Act of 1902.

The contention of the companies concerned was that under the clause in the Assesment Act of 1902 exempting rolling stock, the machinery and appliances in their b ildings were not assessable. They claimed that the exemptions applied to the rolling stock and all their plant and appliances save those existing on or situate upon the streets, roads, highways, lanes, and other public places of the municipality.

The judgment is a most exhaustive document, but it all hinges on the interpretation of sub-section four, which reads :—

> Save as aforesaid rolling stock, plant and appliances of companies mentioned in sub-section 2 hereof, shall not be land within the meaning of the Assessment Act, and shall not be assesssable.

Sub-section 2 deals with heat, light and power companies, telegraph and telephone companies, and companies operating street railways and electric railways. The land of such companies is directed to be assessed in cities in the ward in which the company has its head office, or if they have no head office in the municipality, then all the land possessed by these compani s wherever situate within the municipal boundaries may be assess d in any ward of the city.

The judges point out that the construction which the companies desire to have placed on sub-section 4 would be unjust and inequitable, and contrary to the principles underlying the Assessment Act

The Legislature has expressed its mind clearly in sub-section 9 of section 2 of the Assessment Act, that land, real property, and real estate respectively, shall include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty. Further, by section 7 of the Assessment Act it is said that all property in this province shall be liable to assessment.

The Act also defines the word property as including both real and personal property, as defined in sub-sections 9 and 10 of section 2 of the Act. The language of every subsequent enactment affecting assessment must, therefore, be construed asfar as possible, giving due effect to the language of the foregoing sections, unless the language of such later enactments in express terms modifies or repeals them. The law will not allow the revocation or alteration of a statute by construction when the words may have their proper operation without it.

The judgment points out that the object of the legislation in question here was to put an end to what was known as the scrap-iron method of valuing plant and appliances of certain companies occupying the public streets of the municipality. One of the grounds assigned by the Court of Appeal for de iding that the so called scrap-iron basis of valuation was corrected in principle was that the assessment of the outside plant of certain companies was directed by the Assessment Act to be made separately in each ward, and that therefore the plant c uld not be valued as a whole.

The Legislature in 1901 abolished separate assessment in wards, and made the whole plant on the streets assessable as if the entire system was in one ward only. This amendment, it was held, did not have the effect of abolishing the scrap-iron basis of valuation. In the Act of 1902 all difficulties of asse ssingthe plant of the named companies situate on the streets was done away with. This portion of the plant was taken out of the operation of section 28 of the Assessment Act as to the method of its valuation ; a new basis was established in which it was directed that certain enumerated portions of this plant should be assessed at their actual cash value, as the same would be appraised upon a sale to another company possessing similiar powers, rights, and franchises in and from the municipality. Now, the whole scope and object of the Act of 1902 was to clear away the separate assessment in wards, and also to end the scrap iron theory. No one was complaining or had ever complained of the assessment against the companies of the portion of their machinery, plant, and appliances fixed or situated in the companies' buildings on land not forming a part of the public street or highway. No exemption, no special scrap-iron theory had ever been sought to be applied to such portions of the plant and appliances. The contest had been over the street portion of their property. Can it be assumed that the Legislature ever contemplated for a moment putting the named companies upon a better footing than other companies in reference to their assessment liability? On the contrary, the effect was to get legislation that would subject their street plant and appliances to assessment upon the same basis as their other plant, and the Act of 1902 was intended to accomplish this.

With reference to the rolling stock part of their plant and appliances, different considerations prevailed. Street cars were first assessed in 1901 ; the rolling stock of no other railway company, save electric railways, had ever been assessed or sought to be made liable ; their cars were always considered personal property, and, like the personal property of all such companies, was not liable to assessment or taxation. The rolling stock of steam railways was not liable to assessment, and it was felt that electric railways should fairly be put upon the same basis ; hence the exempt on in sub section 4.

Therefore, looking to the whole history of the Legislation, it is reasonably plain that with the exception as to rolling stock it was intended to make the outside plant of the companies named liable to assessment at its cash valne, and to remove the alleged injustice of the scrap-iron method of valuation.

The conclusion of the matter then is, that the words "plant and appliances" used in sub section 4 must be confined to any plant and appliances located upon the streets, roads and highways and other public places in the municipality, such words taking this limited meaning because they must be referred to the words "rolling stock," which immediately precede them in the same sub-section, and because it is manifestly the intention of the Legislature in enacting a new section 18 of the Assessment Act to deal only with the method of assessing so much of the property of the companies named in sub-section 2 as was situated upon the public streets of the municipality.

This is the unanimous finding of the Board of Judges upon the construction of the statute of 1902.

QUESTION DRAWER.

(Continued from Page 187)

law is thus propounded ; the owners of property abutting upon a public highway are entitled to compensation from the municipality under the Municipal Act, for injury sustained by reason of the municipality, having for the public convenience, raised the highway in such a manner as to cut off the ingress and egress to and from their property abutting on the highway which they had formerly enjoyed, and to make a new approach necessary. According to this decision it appears, that where a man's approach to a highway is destroyed by work done on the highway for its improvement so as to require a new approach, he is entitled to compensation and as that compensation would be measured by the cost of making a new approach, it would amount in dollars and cents to the same thing as if the council restored the crossing.

4. In view of our answer to the preceding question it is unnecessary to answer this.

The Merrickville council has decided to buy a fire engine and is endeavoring to purchase one from the Canadian Fire Engine Co. for $2,400.