

ASSESSMENT OF RAILWAY PROPERTY

We are indebted to His Honor Judge CHAPPLE, and Mr. J. H. WILSON, clerk of the town of Rainy River, for the following important judgment on the assessment of the property of railway companies. The main legal point involved in this and another case reported in this issue, namely, that the provisions of section 45 of the Assessment Act, 1904, do not apply unless the assessment of the railway property has been made in accordance with the provisions of section 44 of the Act, is, we believe, a new one;

In the matter of an appeal from the Court of Revision of the town of Rainy River,

BETWEEN

*The Canadian Northern Railway Co., Appellants
and*

The Town of Rainy River, Respondents.

This is an appeal by the Canadian Northern Railway Co. from their assessment as reduced by the Court of Revision of the town of Rainy River from \$37,950.00 to \$32,950.00.

The particulars of the assessment, as it appears upon the assessment roll for 1907, is as follows:

Roadway, in town of Rainy River, 89.74 acres....	\$12,000
Round House	20,00
Sand House.....	200
Oil House	150
Ice House	200
Station House	5,000
Freight Shed	400
Total.....	\$37,950

The assessment value of the Round House was reduced by the Court of Revision to \$16,000, and the Station House to \$4,000, leaving the total amount of the assessment at \$32,950, from which the appellants appeal on two grounds, viz.:

1st. That the assessment is too high, and that it is improper.

2nd. That under and by virtue of section 45 of 4 Edward VII., chapter 23 (Ontario Statutes, 1904), the assessment of the Canadian Northern Railway Co. as finally revised for the year 1905, must remain the amount for which the company shall be assessed for the succeeding four years. In dealing with the second objection, first, I find that section 45 of the Assessment Act does not apply to the assessment of this railway company for the years 1905 or 1906, as their assessment was not made in those years under the provisions of section 44 of said Act, which is a condition precedent, the assessment appearing on the assessment rolls for the years 1905 and 1906 in one sum, viz.: "Roadway in the town of Rainy River, 89.74 acres—\$12,000," which was stated to have occurred from some alleged understanding some years ago, and never changed. Furthermore, the amendment to the Assessment Act passed in 1906, and being section 13 of chapter 36, 6 Edward VII., makes it quite clear that any assessment heretofore made may be corrected so as to conform to the provisions of said amendment, notwithstanding the provisions of section 45.

In accordance with section 78 of The Assessment Act I re-opened the whole question of the assessment and considerable evidence was given before me by both parties, which, however, was extremely contradictory, and in many respects most unsatisfactory, the parties interested apparently not clearly understanding the proper mode of assessing railway property under the provisions of section 44 of The Assessment Act. The wit-

nesses called by the appellants in most cases differed very much in their opinions as to the value of both lands and buildings. I have, however, endeavored to arrive at as nearly an equitable value of the lands and buildings as possible, not only from hearing the evidence adduced, but also from a perusal of the assessment roll and a personal inspection of the property. The roadway or right of way passes through the town from east to west and the land in some portions is much more valuable than in others, and varied according to the evidence all the way from \$8 to \$500 per acre. Last year, however, after considerable evidence being taken before a board of Judges (of which I was one) 80 acres of land belonging to the Rainy River Lumber Company in the locality of the railway was assessed at \$100 per acre. This, however, was cleared land, mostly used by the company for the purposes of its business.

It was agreed that of the 89.74 acres of land belonging to the railway company that 35 acres were cleared and used by the company, the balance being vacant or bush land not used for any purpose.

I therefore find that the Canadian Northern Railway Company should be assessed under the provisions of section 44 of The Assessment Act as amended as follows:

A		B C none		D
Quantity of land occupied by roadway		Vacant land uncleared and not in actual use		Other real property and buildings in actual use and occupation
Acres	Value	Acres	Value	Value—particulars under
35	\$3,500	54.74	\$1,370	\$20,475.00

Particulars of valuation under clause D

Round House.....	\$15,000
Sand House.....	175
Oil House.....	150
Ice House.....	200
Station House.....	4,500
Freight Shed.....	450
	\$20,475

This makes the total assessment \$25,245.00.

The assessor had assessed the quantity of land occupied by roadway at \$12,000, which is an exorbitant figure, and for which no reason can be assigned other than that in the statement furnished by the company on the 31st January, 1907, in accordance with section 44 of The Assessment Act, they had so valued that land at that figure which they said included all their buildings, etc., which it should not have done. I have assessed the used land at \$100 per acre and vacant land at \$25, which I consider equitable under the circumstances, but must say there is a large quantity of land in Rainy River assessed at too low a value—and a competent person should be employed to assess same in accordance with the provisions of The Assessment Act.

The evidence given as to the round house, including the turning-table, pits, etc., which was very contradictory, and it is very difficult for me to arrive at its actual value, but as this assessment is likely to remain for some time and it is in a bad state of repair, I reduce the amount by \$1,000. In the other buildings I have made little change. It was urged by counsel for the respondents that the "tank" should be assessed, but I think it is clearly exempt under the amendment of 1906 already referred to (section 13 of chapter 36, 6 Edward VII.) as "being used exclusively for railway purpose or incidental thereto."

I authorize and instruct the clerk of the municipality to amend the assessment roll of the municipality in accordance with the above findings.