show the real state of the business of the company, and the deposit was properly classed with the deductions, and the assessors had no right to disregard the statement and arbitrarily assess the company as they did.

Appeal allowed with costs.

Weldon, Q.C., and *Bruce*, Q.C., for the appellant.

Jack, Q.C., for the respondent.

TIMMERMAN *v.* CITY OF ST. JOHN.

Assessment and taxes—Taxation of railway—Statutory form—Departure from—Powers of assessors—53 Vict., c. 27, s. 125 (N.B.).

By the assessment law of the city of St. John (53 Vict., c. 27, s. 125 [N.B.]), the agent or manager of any joint stock company or corporation established abroad or out of the limits of the province may be rated and assessed upon the gross and total income received for such company or corporation, deducting only therefrom reasonable cost of management, etc., and such agent or manager is required to furnish to the assessors each year a statement under oath in a prescribed form, showing the gross income and the deductions of the various classes allowed, the balance to be the income to be assessed; and in case of neglect to furnish such statement, the assessors are to fix the amount of such income to be assessed according to their best judgment, and there shall be no appeal from such assessment.

The Atlantic division of the C.P.R. runs from Megantic, in the Province of Quebec, through the State of Maine into New Brunswick; it runs over a line leased from a New Brunswick company to the western side of the River St. John, and then over a bridge into the city, where it takes the I.C.R. road. The general superintendent has an office in the city, but all monies received there are sent to the head office in Montreal.

The superintendent was furnished with a printed form to be filled up for the assessors as required by said Act, which was as follows:

"Gross and total income received for (company) during the fiscal year of . . . next preceding the first day of April. This amount has not been reduced or offset by any losses," etc. This latter clause the superintendent struck out, and filled in the first clause by stating that no income had been received by the company; the remainder of the form, consisting of details of the deductions, was not filled in. This was given to the assessors as the statement called for, and they disregarded it, assessing the company on an income of $140,000 without making any inquiries of the superintendent as the Act authorized them to do. A rule for a certiorari to quash this assessment was obtained, but discharged by the court, on the ground that the superintendent had so far departed from the prescribed form that he had, in effect, failed to furnish a statement as required by the Act, and the assessment against him was final.

Held, reversing the decision of the court below, FOURNIER and TASCHEREAU, JJ., dissenting, that the superintendent had a right to modify the form prescribed to enable him to show the true facts as to the business of the company in St. John, and the assessors had no right to arbitrarily fix an amount