

Assessment]

APPEALS FROM THE COURT OF REVISION OF COBOURG.

[Case.

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ASSESSMENT CASES.

IN THE MATTER OF THE APPEALS FROM THE
COURT OF REVISION OF THE TOWN OF CO-
BOURG.

Assessment of Bank Stock.

Bank Stock is not personal property liable to assessment within the meaning of 32 Vict., cap. 36, sec. 4.

[Cobourg, July 10, 1873.—*Boswell, Co. J.*]

Appeals from the Court of Revision of the Town of Cobourg to His Honor the County Judge, who delivered the following judgment:—

BOSWELL, Co. J.—After as much consideration as the time permits, and not without very grave doubts, I have arrived at the conclusion that the Provincial Legislature, in the definition of personal property contained in the fourth section of the Assessment Act, (32 Vict: cap. 36) did not intend to include bank stock. At the time of the passing of that Act bank issues were liable to a duty, under the Act Con. Stat. Can., cap. 21, and the Provincial Legislature seem to have considered this a sufficient reason for exempting bank stock from assessment. The clause expressly exempting it (sec. 9, sub sec. 16) may be considered as enacted for the purpose of making their intention clear and as explanatory of the reason for exempting it. In the event of the removal of the tax on the issues, it may be assumed that the Provincial Legislature, before making the stock subject to assessment, might reasonably desire to consider all the stipulations and conditions attached to its removal.

The language of the section, although it seems on a casual reading to be most comprehensive, admits, I think, of the construction I give to it. Shares in incorporated companies are particularly specified, but not dividends from those shares, and dividends from bank stock expressly mentioned, while the clause is altogether silent as to bank stock itself. Both in this section and in the exempting clause this species of property is defined as "stock," while property in other incorporated companies is called "shares." This, at least, shows that a distinction pervaded the mind of the framer of the Act. Then, if the stock be liable to assessment, both dividends and stock would be liable, and it is quite clear that the legislature did not intend to tax both. So important an item of property as bank stock would surely have been

specified if it had been intended that it should be included as personal property liable to assessment as soon as the tax on issues was removed, and without further legislation.

Should the section defining personal property not admit of the construction I have put on it, and its language be held to comprehend bank stock, then it would be necessary to consider the questions, raised by the learned counsel for the appellants, whether the Act imposing the tax has been so entirely repealed as to deprive the stock of the benefit of the exemption contemplated in the Assessment Act.

The exempting clause protects the stock from assessment "so long as there is a special tax on bank issues." The Dominion Act (34 Vict: cap. 5, sec. 15) "exempts every bank to which that Act applies from the tax now imposed, * * * to which other banks," the same section goes on to express, "will continue liable." Section 73 of the same Act enacts that "this Act shall not apply to any now existing bank not mentioned in the schedule," contemplating clearly that other banks were in existence which would be still liable to the tax. Then the repealing section of [the Act (sec. 76) is altogether silent respecting the Act imposing the tax. It cannot therefore be said that there is no longer "a special tax on bank issues," and if we were confined to strict grammatical construction, without being at liberty to consider the intention of the legislature, it must be admitted that the language of the exempting clause would still protect the banks in question from assessment, because a special tax on bank issues is in fact still continued by the Dominion Act.

I do not deem this fact conclusive, and I doubt whether I should have adopted the construction contended for, had it been necessary to decide this point. I am not prepared, on the other hand, to say that the argument is fallacious. The language in the exemption clause of the Assessment Act may have been framed with a view to protect from assessment the stock of banks coming within the meaning of sec. 5 of the Act, Con. Stat. Canada, cap. 21. By this section, which imposed the duty on bank issues, banks complying with the Act respecting banks and freedom of banking (Con. Stat. Can., cap. 55), are, upon certain conditions, expressly relieved from the tax on issues. Whether any banks availed themselves of that section or not this court is not at present advised, but I am strongly of opinion that the stock of a bank in operation under that section, and consequently paying no duty on its issues, would have been