

by two cables, the one joining the trolley wire, and the other joining the tracks. It is an important part of plaintiffs' electric railway system. Its functions are not only to regulate the current supplied by the generators, but to act as a reservoir for surplus electric energy, and it contributes greatly to the efficient and economical operation of the railway.

Plaintiffs were assessed for \$100,000 in respect of the 3 lots, and of that sum \$40,000 was the value placed upon the battery.

Plaintiffs take 2 objections to the assessment: first, to the whole sum, on the ground that the lots are the property of the Crown, and therefore defendants have no jurisdiction to assess or impose taxes upon it; and second, to the \$40,000, on the ground that the storage battery is personal property, and therefore exempt from taxation under an agreement between plaintiffs and defendants, dated 28th June, 1893, confirmed by ch. 76 of the statutes of Ontario, 1894.

The lease from the Crown to plaintiffs is for 21 years, at a yearly rental, and is renewable in perpetuity, and there is no restraint upon assignment.

I think the first objection must be disallowed, on the authority of *Niagara Falls Park R. W. Co. v. Town of Niagara Falls*, 31 O. R. 29, and the cases therein referred to.

The assessment in question is under sub-sec. 2 of sec. 7 of R. S. O. 1897 ch. 224, which reads: "Where any property mentioned in the preceding clause"—property vested in the Crown—"is occupied by any person otherwise than in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable."

Now, while the fee in the land in question is vested in the Crown, plaintiffs own the leasehold estate therein, and are in actual continuous and exclusive possession thereof, for the purposes of their business, and not in any official capacity. I am, therefore, of the opinion that, while the land itself is not liable for the taxes, plaintiffs were properly assessed in respect of the same.

See also *Mersey v. Cameron*, 11 H. L. Cas. 443; *Totten v. Truax*, 16 O. R. 490; *Ruddell v. Georgeson*, 5 *Western Law Times* 2, per Killam, J.; *California v. Moore*, 12 Cal. 56; *Ex p. Gaines*, 56 Ark. 227.

As to the second objection, the agreement referred to provides as follows: "18. The corporation shall grant to the said companies exemption from taxation and all other