

Ap. Case.]

SIMCOE v. NORFOLK.

[Ap. Case.]

taken from the aggregate valuation of the Town of Simcoe, must be added to the aggregate valuation of the Townships, or some of them, as the aggregate valuation of the whole County must not be reduced.

The Warden of the County, Daniel Matthews Esq. and Charles Robertson Esq., the Deputy Reeve of Windham, appear for the County Council, and Daniel Tisdale Esq., of the firm of Tisdale and Livingstone, appears for the Town of Simcoe.

The County Council admit, that the aggregate valuation of the Town, must be ascertained by six per centum interest on an aggregate valuation of the Town, capitalized at ten per centum, but contend that they, the County Council, have the right (under sec. 74 aforesaid) to fix such aggregate valuation of the Town, upon which the six per centum is to be calculated, and the ten per centum capitalized, instead of being bound by the amount "returned on the roll." They further contend, that even if wrong in this contention, the town of Simcoe must be assessed *this year*, for County purposes, on the equalization of last year; in other words, that the change of the law (if any in this respect) cannot be taken advantage of by the town of Simcoe, so as to avoid being assessed for County purposes this year, upon last year's equalization. They cite section 74 of said Act to support this argument. Mr. Tisdale, on behalf of the town, contends that the County Council is bound by the amount returned on the Simcoe Roll, and that the interest at six per centum on that amount, capitalized at ten per centum, must be the aggregate valuation for the town, and that any other construction would render sub-section 2 of section 71 nugatory, and of no effect.

And further, as to this statute not applying to this year's assessment, Mr. Tisdale also contends; that there is nothing in section 74, or any other section of the Act, to warrant a conclusion that the old Act is entirely repealed, and that all proceedings of the County Council must be under this statute.

The Warden produced a letter from the Hon. M. C. Cameron, expressing the opinion of that learned gentleman on the question; He (but under some doubt) is in favor of the position contended for by the town of Simcoe, but admits that his partner, Dr. McMichael, entertains the opposite view, and states that the Council of York had also adopted that construction of the statute; that is, that the County Council may treat the capitalized value as *alterable*, instead of being bound to take the assessed value for the purpose of capitalization.

The 71st section of the Assessment Law of 1869 provides that the Council "may for the purpose of County rates increase or decrease the aggregate valuations, and adding or deducting so much per centum as may in their opinion be necessary to produce a just relation between all the valuations of real and personal estate in the county."

Then sub-section 2 of section 71 provides that, "In equalizing the rolls of Towns and Villages, the County Council shall take the interest of the amount returned on the rolls at six per centum, such capitalization shall be the aggregate valuation for such Towns and Villages for the purposes mentioned in the preceding section." The difficulty arises in determining what the pur-

poses in the preceding section are. For the purpose of County rates—the increase or decrease is to be made by section 71; if this is the only purpose referred to in sub-section 2, then the capitalized value cannot be altered; but if this capitalized value is the aggregate valuation for the purpose of ascertaining by comparison, whether it is a just valuation with respect to other municipalities, then of course this aggregate may be increased or decreased in the discretion of the County Council.

I can find no decisions upon this point, and must therefore rely entirely upon my own view of the statute. And after carefully considering it, I am of opinion that the contention of the town of Simcoe is correct, and that the County Council did not adopt the correct method in equalizing the roll of Simcoe. By reading section 71 and sub-section 2 thereof together, I can come to no other conclusion but that the County Council should, in equalizing the roll of Simcoe, have taken the interest at six per centum on the amount returned on the Roll, and capitalized the same at ten per centum. I think that the statute fixes such last-mentioned capitalization as the aggregate valuation for the town, and that the County Council have no power to change it. It may, of course, be argued that this decision will enable assessors in towns and villages, by a low valuation, to give such Towns and Villages an undue advantage over Township Municipalities, but although I admit this, and see a necessity for further legislation upon this point, I am still of the opinion that my decision is in accordance with the true rendering of the Statute. I am also of opinion that the statute applies to the assessment for the present year, and that therefore the Town of Simcoe should only be equalized for County purposes for this year, on the sum of \$303,000 instead of \$360,000, and I therefore allow the appeal of the Town of Simcoe, and equalize their aggregate assessment for County purposes at the said sum of \$303,000: this leaves the total aggregate equalization of the County at the sum of \$57,000 less, and it devolves upon me, according to the provisions of the statute, to divide and add this sum to, or among, the several Townships of the County, or to some of them. In the absence of any evidence produced before me, and in the absence of any action of the County Council, it appears to me that my proper course is to divide and add the said sum of \$57,000 pro rata, according to their previous equalization by the County Council, among the several Townships of the said County, thus:—

Townships.	Equalization by County Council.	Added by Judge.	Total.
Townsend	\$1,140,000	\$13,500	\$1,153,500
Windham	735,000	8,800	743,800
Middleton	360,000	4,400	364,400
Houghton	285,000	3,300	288,300
Walsingham	760,000	9,000	769,000
Charlottetown	700,000	8,300	708,300
Woodhouse	825,000	9,700	834,700
Town of Simcoe	360,000		360,000
say	\$360,000		
Am't ded'ct'd by Judge .. 57,000	\$5,165,000	\$57,000	\$5,165,000
\$303,000			