prepared to agree with all the learned judge said in reference to the taxation of railway lands. That decision was, moreover, anterior to the other decisions of the Superior Court Judges, and must be held to be overruled so far as it is opposed to them.

I found several cases in our courts in which railways companies have resisted what they considered illegal and improper assessment upon their property, but none raising distinctly the matter in dispute in this appeal. Considering the well known inclination of municipalities to tax everything, and of railway companies to pay as little taxes as possible, I cannot account for the absence of any such case except upon the hypothesis that the foregoing judgments have been accepted as determining beyond doubt the liability of railway buildings to municipal assessment.

Several American cases were cited in the argument by the learned counsel for the company, in which some American courts held railways to be totally exempt from taxation. The examination of these decisions show that they proceeded chiefly on the ground that the provisions of the charters of the railway companies in the states in which the decisions took place contemplated such an exemption, and they do not therefore afford much assistance in the present case, which must be decided on a different principle.

It is a clear principle of law that when an exemption is claimed it must be clearly made out by the party making it. When there is no express provision to the contrary the burden of taxation should fall equally upon the whole rateable property, real and personal, of the municipality. Section 6 of the Assessment Act provides that all land and personal property in this province shall be liable to taxation, subject to certain exemptions therein mentioned, which exemptions make no reference to railway property of any kind.

I am of the opinion that sub-sect. 1 of section 26 of the Assessment Act contains language which imports clearly enough that only the land of the "roadway" or tract on which the rails are laid can be assessed, and that the superstructure, such as rails, bridges, etc., cannot be taken into consideration when determining the value at which the land of the "roadway" ought to be assessed. But sub-section 2, which applies to the assessment of the other real property in the occupation of the railway company, contains no language from which any exemption can be implied. Whilst the first section uses the word "land," and declares that it cannot be rated higher than other land in the locality in which the same was rated during the previous year, the second sub-section uses a different and, in its ordinary signification, a wider term, namely, "real property," and provides that it is to be assessed at its value. Section 2 contains no words restricting the meaning given to the term "real property" by sub-section 7 of section 2 of the Act, which declares that the words "real property" shall include the buildings or other things erected on the land, neither does it contain any words indicating in any way that the "real property" should be rated relatively to any other property or lands in the locality.

It may be remarked, moreover, as important that whilst the former Assessment Act, 16 Vict., chap. 182, sect. 21, provided in one section for the assessment of the land and real property of railways, the present Act contains three sub-sections providing separately for the assessment of the three different kinds of railway property therein specified, with the evident purpose of not only directing a different basis of assessment for each, but also of removing all doubt about the partial exemption given in the first sub-section, not applying to the "real property" referred to in the second sub-section. The transposition in the present Act of the parts of clause 21 of the former Act, and the precision with which these parts are formulated in the three sub-sections of the present Act, clearly point in the same direction. If the land on which stations, offices and storehouses are erected is held to be roadway, and such buildings held to be superstructure and exempt, it would be difficult to imagine what property of railway companies the Legislature intended should be assessed under the head of "real property" mentioned in sub-section 2.

I am, therefore, of opinion that the stations and other buildings of the company must, for the purposes of assessment, be included in determining the value of the land in which they are erected and both assessed together under the head of "real property" in the occupation of the company. I regret having to differ from my brother Judge Ross, who is of opinion that such buildings are not assessable as being part of the superstructure and necessary for the convenient carrying on of the business of the railway. As to the division of the land under the several headings required by the statute, I do not see any difficulty on the evidence. Whether a small portion of the land used for switches, etc., outside of the main track of the railway should be included under the head of "real property in actual use" presents no practical difficulty, as the assessment of it under either head would, according to the evidence, be about the same. As my brother Judge Lyon agrees with me in opinion it will be ordered that the assessment roll shall be amended and altered as follows:—

Roadway, part lot 39, west Broad Street, 5¼ acres	$9,875
Land in actual use and occupation by the railway, 6¾ acres, being part Broad Street west	25,000
Land not in actual use of the railway, 4 acres, part of 39 Broad Street west, being vacant land	600
	$34,975