
Province of Manitoba.

KING'S BENCH.

Macdonald, J.]

[June 21.]

DOMINION EXPRESS CO. v. CITY OF BRANDON.

Taxation—Corporations Taxation Act, and business tax levied by—63 & 64 Vict. c. 35, s. 2—Construction of statutes.

The taxation imposed upon express companies for Provincial revenue by sub-s. (m) of s. 3, of the Corporations Taxation Act, R.S.M. 1902, c. 164, as re-enacted by 5 & 6 Edw. VII. c. 87, s. 7, is a business tax, being based partly on the number of its branch offices in the Province, and, since s. 18 of the same Act provides that, when a company pays such tax, no similar tax shall be imposed or collected by any municipality, the defendant city has no right to impose, under s. 2 of 63 & 64 Vict., a tax on the company in respect of its branch office in the city, such tax being expressly called a business tax by the last named Act. The original Corporations Taxation Act was assented to on the same day as the Act under which the defendants sought to impose the tax in question.

Held, that it must be presumed that the intention of the Legislature was that s. 18 of the former Act should govern and should exclude the tax under the latter Act. Injunction to go restraining defendants from proceeding under distress warrant to levy the tax in question.

Coyne, for plaintiffs. *Matheson*, for defendants.

Mathers, C.J.]

[July 1910.]

DAVIES v. CITY OF WINNIPEG.

Negligence—Municipality—Liability of for non-repair of sidewalk.

Under s. 667 of the Municipal Act, R.S.M. 1902, c. 116, or under s. 722 of the Winnipeg charter, 1 & 2 Edw. VII. c. 77, a municipality is not liable for the consequences of an accident caused by the want of repair of a sidewalk unless negligence on its part is shewn.

The plaintiff was injured by the tilting up of a loose plank in a sidewalk only ten years old which had been regularly inspected by an officer of the city without discovery of the defect