

Electric Railway Department

Taxation of Electric Railway Substructures and Superstructures in Ontario.

Under the Ontario Assessment Act, prior to the Ontario Legislature's last session, considerable discrimination was made between the mode of assessment of electric and steam railway companies properties. Previous to this year, a number of appeals were prosecuted by the Canadian Northern Ry.'s Tax Department on behalf of the Niagara, St. Catharines & Toronto Ry., a C.N.R. subsidiary company, on the grounds that the substructures and superstructure of an electric railway, when situated on the company's private right of way, was exempt from taxation. The grounds of the company's appeal were substantiated under sec. 44 of the Ontario Assessment Act, R.S.O., 1914, chap. 195, which provides that, "The property by paragraph 5 of clause (h) of sec. 2 of the act declared to be land . . . owned by companies operating steam and electric railways, etc., shall be assessed in the ward in which the head office of such companies or person is situate, and in assessing such property, whether situate or not situate, on a highway, street or road or other public place, shall be assessed at its actual cash value as the same would be appraised upon sale to another company, possessing similar rights and franchises."

The property referred to in paragraph 5 of clause (h) of sec. 2, is described under this particular section as being "All structures, fixtures, affixed to any highway, lane or other public communication."

The company, therefore, contended that the intention of the act was merely to assess the structures and fixtures, situate on a highway as declared by sec. 44 above referred to, and to exempt in a similar manner to steam railway lands, structures and superstructures situate on a private right of way. The matter was finally disposed of on appeal to the county judge in the case of Grantham municipality, where it was held that the ambiguous subsec. 3 of sec. 44, providing for the assessment of lands described under paragraph 5 of clause (h) of sec. 2 (superstructure situate on a public highway), would also include superstructure situate on a private right of way by virtue of the fact that the subsection ambiguously read, "The superstructure and substructure on any highway" should be assessed whether situate on any highway or not (private right of way), at its actual cash value as the same would be appraised upon sale to another company possessing similar rights and franchises. The decision of the county judge in this matter meant that where steam was the motive power, the superstructures and substructures situate on a private right of way were exempt from taxation under sec. 47 of the act (which specifically held this class of property exempt from taxation), while similar property of a railway operated by electricity would be held assessable.

Finally, the attention of the Ontario Government was drawn to the unfair discrimination and an amendment was passed at the legislature last session providing that "Notwithstanding anything contained in this section or any other section of this act, the structures, substructures, superstructures, rails, ties,

poles and wires of an electric railway, shall be liable to assessment in the same manner and to the same extent as those of a steam railway are under the provisions of sec. 47 and not otherwise."

Irrespective of this amendment, the City of Toronto again assessed the Toronto Suburban Ry. Co., another C.N.R. subsidiary, for substructure, superstructure and machinery, etc., situate on the private right of way of the company. The C. N. R. Tax Commissioner, T.G. Watson, prosecuted the appeal before the court of revision on June 2. The assessment, however, was confirmed and further appeal was made to the county judge. The principal grounds of the appeal are as follows:

The amendment passed, at the legislature's last session, to sec. 44, relating to the assessment of electric railway companies, provides that, "The structures, substructures and superstructures, etc., of an electric railway company shall be liable to assessment and taxation in the same manner and to the same extent as those of a steam railway are under the provisions of sec. 47 and not otherwise."

Sec. 47 of the Assessment Act provides in subsec. (a) that the roadway or right of way of a railway company shall be assessed at its actual cash value, not including the structures, substructures and superstructures, rails, ties and poles, and other property thereon and subsec. (c) provides that the structures, substructures and superstructures, rails, ties and poles upon, in, over, under or affixed to any highway, shall be assessed at their actual cash value as the same would be appraised upon sale to another company possessing similar rights and franchises.

Subsec. 3 of sec. 47 provides that, "Notwithstanding anything in this act contained, the structures, substructures and superstructures, rails and other property on railway lands and used exclusively for railway purposes or incidental thereto (except station, freight sheds, offices, warehouses, elevators, round-houses and repair shops), shall not be assessed."

Further, it is provided, under subsec. 5 of sec. 47, that, "A railway company assessed under this section shall be exempt from assessment in any other manner for municipal purposes, except for local improvements."

The Toronto Suburban Ry. Co.'s appeal in the City of Toronto was filed on the two grounds: First, that the recent amendment to the Assessment Act, providing that the assessment of electric railway companies should be made in the same manner and to the same extent as the property of a steam railway under sec. 47 of the act, above referred to, would exclude from taxation the substructures, machinery, etc., of the company, situate on lands owned by the company in a similar manner as the exemption granted the same class of property of a steam railway. Further appeal was prosecuted on the grounds that the Toronto Suburban Ry. would be exempt from business taxes under the recent amendment to sec. 44, which provides that an electric railway shall be assessed in the same manner and to the same extent as steam railways under sec. 47 of the act.

Subsec. 5 of sec. 47 provides that, "A railway company assessed under this section shall be exempt from assessment in any other manner for municipal purposes except local improvements." This subsection has always excluded, without question, the lands of a railway company from business taxes, and it was, therefore, submitted that an electric railway company under the recent amendment is entitled to a similar exemption.

The act itself seems perfectly clear on this point, and on equitable grounds, it would seem reasonable that all railway companies, whether operated by steam or electricity, should be granted the same basis of assessment. On appealing before the court of revision for the City of Toronto, the court was somewhat divided in opinion. The assessment was finally confirmed and further appeal was, therefore, made to the county judge.

The matter came before County Judge Coatsworth towards the end of October, when he at first decided to confirm the assessment and then, by request, consented to reserve decision. It appears that he is of the opinion that the company's transformers are not in the nature of a structure and are, therefore, correctly assessable under the provisions of the 1919 amendment to sec. 44 of the Ontario Assessment Act.

County Judge Coatsworth finally held that the Toronto Suburban Ry. Co.'s transformers could not be defined as structures under the 1919 amendment to the Assessment Act which provides that, "The structures, substructures and superstructures, etc., of an electric railway company shall be liable to assessment in the same manner and to the same extent as those of a steam railway company are under sec. 47 of the act."

In this particular case, the Toronto Suburban Ry. is not the owner of the building containing the transformers, and there was, therefore, no appeal by the railway as to the assessment of the building. The Grand River Ry. has appeals pending in Preston and Kitchener, where the power houses are assessed. It would seem that these buildings would be exempt from assessment under sec. 47 of the Assessment Act which declares that "Structures of a railway company shall be exempt, except stations, freight sheds, offices, warehouses, elevators, hotels, round houses, machine, repair and other shops."

Service at Cost Defeated in Minneapolis—The Minneapolis, Minn., City Council passed an ordinance, Sept. 4, 1919, granting a new franchise to the Minneapolis St. Ry. (Twin City Rapid Transit Co.), on a cost of service basis. The franchise was submitted to the rate-payers on Dec. 9 for ratification and was defeated by a vote of 30,546 to 23,161.

Hydro Electric Power Commission of Ontario's Power Canal—In connection with the construction of the new Chip-pawa Power Canal, the Hydro Electric Power Commission of Ontario received tenders to Dec. 22 for the erection of the steel superstructure for a bridge to carry the Michigan Central Rd. tracks across the canal at Montrose, Ont.