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THE CENTRAL VERMONT RAILWAY CO. ..... } APPELLANTS;

AND

THE TOWN OF ST. JOHNS ..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Railway bridge and railway track—Assessments of—Illegal—40 Vic. ch., 29, secs. 326 & 327—Injunction—Proper remedy—Extension of town limits to middle of a navigable river—Intra vires of local legislature—43 & 44 Vic. ch. 62 P. Q.

Held, reversing the judgment of the Court of Queen's Bench, (P.Q.,) Fournier and Taschereau JJ. dissenting, that the portion of the railway bridge built over the Richelieu river, and the railway track belonging to appellant's company within the limits of the town of St. Johns, are exempt from taxation under sections 326 and 327 of 40 Vic., ch. 29 P. Q., although no return had been made to the council by the company of the actual value of their real estate in the municipality.

2. That a warrant to levy the rates upon such property for the years 1880-83, is illegal and void and that a writ of injunction is a proper remedy to enjoin the corporation to desist from all proceedings to enforce the same.

As to whether the clause in the Act of Incorporation of the town of St. Johns, P.Q., extending the limits of said town to the middle Richelieu river, a navigable river, is *intra vires* of the legislature of the Province of Quebec, the Supreme Court of Canada affirmed the holding of the court below that it was *intra vires.*

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment rendered by the Superior Court.

The Central Vermont Railway Co., a body corporate, on the 19th day of December, 1884, presented a petition (*requête libellée*) addressed to any one of the judges of the Superior Court for Lower Canada, together with an affidavit in support of said petition, praying that a writ of injunction should issue addressed to the respondents, the town of St. Johns and to one F. X. Lanier, a bailiff, enjoining upon them to suspend all proceedings

PRESENT—Sir W. J. Ritchie C. J. and Strong, Fournier, Henry, Taschereau and Gwynne JJ.

upon a certain warrant of execution—distress warrant —issued by the said corporation of the town of St. Johns, against the appellants, for the collection of certain taxes upon one-half of appellants' railway bridge over the river Richelieu, its railway tracks and a wooden office, which said warrant had been placed in the hands of the said Lanier for execution, until such time as a further order should be made; and praying also that the seizure or execution, and all proceedings relative thereto, and acts in virtue of which taxes had been imposed against the appellants be declared illegal, null, and of no effect, and be annulled.

The grounds of complaint, as set forth in the petition for an injunction are the following:—

"The respondents have no authority or power to levy a tax upon the appellants:

"1st. Because the said bridge and approach are not situated within the limits and boundaries of said town, the clause of the act of incorporation of the said town fixing the limits of the said town in the middle of the Richelieu river is *ultra vires* and illegal, the said river being a navigable river, and therefore under the sole control of the Dominion Government of Canada, and by reason thereof, the said bridge not being subject to taxation within the meaning of the law;

"2nd. Because according to section 86 of their act of incorporation the said corporation of the town of St. Johns have no right to levy a tax upon immoveable property, but only *sur les personnes et les propriétés mobilières de la ville*, and the said railway bridge being an immoveable, and therefore not subject to taxation by said corporation;

"3rd. Because the said assessment rolls prepared by the assessors duly named by said corporation are illegal, exorbitant and irregular, so far as petitioners (appellants) are concerned, they being assessed for

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property not belonging to them and not in their possession, to wit: for all the portion of railway tracks, materials etc., from Jacques-Cartier street to Longueuil street of said town of St. Johns, and this to the knowledge of said corporation, which although often urged to change and modify said assesssment rolls in so far as petitioners (appellants) are concerned, refused so to do and persisted in said valuation and still persist therein although legally and duly notified of its irregularity and illegality;

"4th and 5th. Because respondents have exceeded their powers in imposing said taxes, and in causing said warrant to be issued for the recovery of said taxes; and because the said warrant and seizure were issued illegally and are irregular, informal, null and void."

The respondents contested this petition by preliminary pleas and by demurrer and a contestation to the merits.

In their demurrer they alleged that the facts related in said petition do not disclose any ground for a writ of injunction; and in their plea or contestation to the merits, they contended that the allegations of appellants' petition are false; that in virtue of their charter, respondents have the right to impose taxes on all immoveables situated within the boundaries of said town, including that part of the said bridge situated within the limits of said town; that all the immoveables for which said appellants are assessed, are occupied by them and are entered in their name on the assessment roll of the said respondents and that no other proprietor thereof is known to the respondents; that the taxes in dispute have been regularly imposed by said respondents; that the assessment made by respondents is not exorbitant; that the warrant of execution has been regularly issued and that appellants had another and simple and inexpen-

sive remedy against said taxation according to the act of incorporation of the respondents, and that they ought to have availed themselves of that remedy within the three months after the homologation of the assessment roll of the respondents.

The respondents also pleaded the general issue.

L. R. Church Q.C. for appellants.

Robidoux Q.C. for respondents.

The statutes and authorities relied on are reviewed at length in the judgments hereinafter given.

SIR W. J. RITCHIE C.J.—The appeal in this case arose upon the following assessments by the respondents on the railway property of the appellant company.

OFFICE OF THE CORPORATION,
St. Johns, P. Q., Feby., 26th, 1884.

THE CENTRAL VERMONT RAILWAY COMPANY,
Dr. to the Corporation of the town of St. Johns,
Municipal taxes for 1883.

No. on roll.	Designation.	Street.	Ward.	Remarks.	Valuation.	At ½ c. on $.
A 122	1 wood office only.....	Lemoine	East..	.....	350	1 75
868	Railway tracks from E. Longueuil street to bridge...	.....	.....	.....	10000	50 00
869	Part of railway bridge within the limits of the town of St. John..	.....	.....	.....	10000	50 00
					20350	101 75
	Interest 3 months.....	.....	.....	.....	.....	1 50
	Arrears 1882..	.....	.....	.....	.....	148 41
	Interest 1¼ year.....	.....	.....	.....	.....	11 13
	Arrears 1881..	.....	.....	.....	.....	148 41
	Interest 2¼ year.....	.....	.....	.....	.....	20 03
	Arrears 1880..	.....	.....	.....	.....	107 16
	Interest 3¼ year.....	.....	.....	.....	.....	20 87
						$559 26

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The contestation was in regard to the assessment on the railway tracks and part of railway bridge within the limits of the town of St. Johns.

Had this case turned on the question as to whether this bridge was or was not moveable property I should have had little difficulty in determining that question in the affirmative; so if it depended on the question as to the liability of the plaintiffs to taxation as occupiers of the bridge, and therefore of the land to which it was attached, and of which it therefore formed a part, I should have had but little difficulty in likewise determining that question in the affirmative; but the real point in controversy is whether or not anything more of the land on which the superstructure of the railroad is placed can be assessed in addition to the land itself, and it seems to me the legislature has carefully protected railways from any local assessment beyond the mere value of the land itself, apart from and independent of the value of the roadway with its superstructure.

The question then in this case arises under section 98 of the incorporation act of the respondents which imports into the charter certain sections of the "Town Corporation General Clauses Act" (40 Vic. ch. 29) sections 326, 327 & 370. By section 326 of the Towns Corporation General Clauses Act (40 Vic. ch. 29):—

Every iron railway company or wooden railway company other than those mentioned in the fifth paragraph of the preceding section and possessing real estate in the municipality, shall transmit to the office of the council in the month of May in each year, a return showing the actual value of their real estate in the municipality other than the road, and also the actual value of the land occupied by the road estimated according to the average value of land in the locality. Such return must be communicated to the valuators by the secretary treasurer in due time.

And by section 327.

The valuators in making the valuation of the taxable property in the municipality shall value the real estate of such company accord-

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ing to the value specified in the return by the company. If such return has not been transmitted in the time prescribed, the valuation of all the immoveable property belonging to the company shall be made in the same manner as that of any other ratepayer.

This last section 327 is not in the Ontario Act, but though no return was made by the company, I cannot see that it makes any more property taxable than could be taxed under section 326, which I think in accordance with the decisions in Ontario, is confined to the lands occupied by the road, and does not include the superstructures.

Apart from the assessment on the bridge the assessment in this case would likewise be bad for assessing the railway track including the superstructure.

There is nothing whatever in my opinion in the objection that the 43 and 44th Vic., ch. 52, fixing the eastern boundary of the corporation of St. Johns at an imaginary line passing through the middle of the Richelieu river was *ultra vires* of the legislature of the Province of Quebec, and therefore unconstitutional.

The appeal in this case should, I think, be allowed.

STRONG J.—The decision of this appeal must depend on the construction to be placed on sections 326 and 327 of the Provincial Act, 40 Vic., ch. 29. By the 98 section of the Act, 43 and 44 Vic., ch. 62, for amending and consolidating the acts relating to the Incorporation of the town of St. Johns, these sections 326 and 327 of the former General Municipal Act are made part of the latter enactment.

These sections relate to the taxation of railways for municipal purposes and are as follows:—

Sec. 326. Every iron railway company or wooden railway company other than those mentioned in the fifth paragraph of the preceding section and possessing real estate in the municipality, shall transmit to the office of the council in the month of May in each year, a return showing the actual value of their real estate in the municipality other than the road, and also the actual value of the land occupied by the road estimated according to the average value of land in the locality.

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Such return must be communicated to the valuators by the secretary treasurer in due time.

Sec. 327. The valuators in making the valuation of the taxable property in the municipality shall value the real estate of such company according to the value specified in the return by the company. If such return has not been transmitted in the time prescribed, the valuation of all the immoveable property belonging to the company shall be made in the same manner as that of any other ratepayer.

The proposition of the appellants is that under these provisions of the law, the respondents were not authorized to make the assessments which they have made of the appellants', property within the limits of the town of St. Johns, and that the taxes which they have levied by distress being based on these assessments are void. These assessments are of "the railway "tracks from East Longueuil street to the bridge and "part of railway bridge within the limits of the town "of St. Johns."

As regards the property assessed under the denomination of "Railway Tracks," it is manifest that by that description we must consider the superstructure of the permanent way, consisting of the ties and iron rails, to be included, and that we cannot treat it as restricted to the mere land on which the ties and rails are laid. And as regards the bridge, it is equally beyond controversy that the structure alone is included in the valuation of the assessors. By section 326 the return which a railway company is required to make is to be, first, of the value of the real estate in the municipality other than the road; and, second, of "the actual value of the land occupied by the road." The first question is, therefore, whether the words "land occupied by the road" authorises the taxation of the superstructure consisting of ties and rails.

There can, I think, be scarcely any doubt that it does not. This description of the property to be taxed, and which is to be estimated according to the average value of land in the locality, does as plainly as language can ex-

press it, confine the subject of taxation to the mere land, minus the rails and ties, laid upon it by the railway company. An analogous provision in the municipal law of Ontario has always received that construction, and without assuming that the decisions of the Ontario courts are in any way binding authorities on the learned judges of the court below, I may refer to the cases of *The Great Western Ry. Co.* v. *Rouse* (1), and *London* v. *G. W. Ry. Co.* (2) as giving sound reasons for such a construction, which I adopt in the present case.

Section 327 contains a provision for a valuation by the valuators of the municipality in case the railway company shall itself make no return of value within the time limited by the act, and enacts that in such case the valuation of "all the immoveable property "belonging to the company shall be made in the same "manner as that of any other ratepayer." It cannot, I think, be successfully contended that the words "all immoveable property belonging to the company" were meant to make that assessable by the valuators, which was exempted in the case of a return being made by the "company itself." There could be no reason for such a distinction, and I refer the use of the expression "all the immoveable property" to the circumstance, that by section 326 the immoveable property of the company was divided into two distinct categories, viz: (1) that other than the road; and (2) that occupied by the road. The words in question were, in my opinion, used as a comprehensive term including both the two classes of property previously distinguished.

As regards the bridge or so much of it as is within the limits of the municipality, I am of opinion that it is in no sense "land occupied by the road," and there is, therefore, no statutory authority whatever for its taxa-

(1) 15 U. C. Q. B. 168. (2) 17 U. C. Q. B. 262.

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tion. The result must be that the assessment having included property not legally liable to taxation, and no distinction being made between such property and that which the statute does make liable, the whole tax is void.

The remedy adopted by the appellants comes within the literal terms of the statute 41 Vic. ch. 14 sec. 1 sub sec. 1, as being an act of a corporation beyond its powers, and I am, therefore, of opinion that this appeal should be allowed with costs to the appellants here and in both the courts below.

FOURNIER J.—Dans cette cause il s'agit de la légalité de taxes imposées par l'Intimée sur certaines propriétés en la possession de l'Appelante, dans les limites de la ville de Saint-Jean. L'une des propriétés taxées est la partie du pont construit sur la rivière Richelieu avec le quai d'approche et les piliers qui se trouvent situés dans les limites de la ville de Saint-Jean, à partir du rivage à aller jusqu'au milieu de la rivière Richelieu. L'autre est la partie du chemin de fer de l'Appelante située dans la dite ville de Saint-Jean à partir de la rue Jacques-Cartier à aller jusqu'à la rue Longueuil. Dans le rôle d'évaluation cette propriété est désignée sous les termes de "Railway track." La dernière est une construction en bois servant de bureau.

L'Appelante, qui a négligé d'adopter dans le temps fixé le recours à la cour Supérieure pour attaquer le rôle d'évaluation, essaie, au moyen d'un bref d'injonction, d'arriver au même but. Dans sa requête elle invoque entre autres les moyens suivants : 1° Que le pont n'est pas situé dans les limites de la ville parce que la clause de l'acte d'incorporation qui en fixe les limites au milieu de la rivière Richelieu est inconstitutionnelle, la dite rivière étant navigable et comme telle sous la juridiction exclusive du parlement du Canada ; 2° que la ville de

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Saint-Jean n'a pas le pouvoir de taxer les propriétés immobilières, mais seulement les personnes et les propriétés mobilières de la ville ; 3° que le rôle de cotisation est illégal et exorbitant en ce qu'il taxe l'Appelante pour une propriété qui ne lui appartient pas et qu'elle ne possède pas dans la ville de Saint-Jean, savoir : le " railway track," la partie du chemin de fer à partir de la rue Jacques-Cartier à aller à la rue Longueuil ; 4° enfin illégalité du warrant d'exécution, etc.

L'Intimée a répondu qu'en vertu de sa charte elle avait droit de taxer toutes les propriétés immobilières situées dans ses limites ; que les propriétés pour lesquelles l'Appelante est cotisée sont occupées par elle et qu'elle en est la seule propriétaire connue. L'Intimée nie que l'estimation soit exorbitante, allègue la régularité du warrant, et que l'Appelante aurait dû dans les trois mois de la date du rôle d'évaluation prendre les procédés indiqués par l'acte d'incorporation pour attaquer le rôle.

Cette contestation soulève les questions suivantes : 1° La législature de Québec avait-elle le droit de fixer le milieu de la rivière Richelieu comme limite de la ville de Saint-Jean ? L'Intimée a-t-elle par sa charte le pouvoir de taxer les immeubles situés dans ses limites ? La cotisation du " railway track " de la rue Jacques-Cartier à la rue Longueuil est-elle légale ?

La première question quant au pouvoir de la législature de Québec de fixer les limites de la ville de Saint-Jean au milieu de la rivière Richelieu mérite à peine d'être examinée. S'il est incontestable que les rivières navigables sont pour les fins de la navigation sous le contrôle du parlement du Canada, il n'est pas moins vrai non plus que les provinces ont sur ces mêmes rivières le droit d'exercer tous les pouvoirs municipaux et de police, pourvu que leur législation n'apporte aucune entrave à la navigation. L'acte 43 et 44 Vic.,

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ch. 53, qui a étendu les limites de la ville de Saint-Jean jusqu'au milieu de la rivière Richelieu ne contient aucune disposition de nature à affecter les intérêts de la navigation.

En vertu de son acte d'incorporation la ville de Saint-Jean a non seulement le pouvoir de taxer les propriétés mobilières, mais son pouvoir s'étend aussi à taxer "all "lands, town lots, and parts of town lots whether there "be buildings erected thereon or not with all buildings "and erections thereon." La prétention contraire soulevée par l'Appelante est fondée sur une omission sans importance qui se trouve dans la version française de la section 86, laquelle déclare que "le dit conseil de "ville aura le droit de prélever annuellement sur les "personnes et les propriétés mobilières de la dite ville "les taxes ci-après désignées." Il est évident que ce n'est que par inadvertance que le mot "immobilières" a été omis à la suite du mot "mobilières." Si cette partie de la dite section devait se lire sans égard à ce qui suit, la prétention de l'Appelante aurait une apparence de plausibilité. Mais la même section continue de suite et dans la même phase, à désigner les taxes qui seront imposées, et la première indiquée est celle sur tous terrains, lots de ville ou portion de lot, etc., ce qui, malgré l'omission du mot "immobilières" dans la partie qui précède ne laisse aucun doute possible sur l'intention de conférer le droit de taxer les immeubles.

La version anglaise contient, il est vrai, le mot "*immoveable*" qui manque dans la première partie de la version française, mais cela ne peut constituer une différence affectant l'interprétation des deux textes, car tous deux confèrent évidemment le droit de taxer les immeubles. Si cette différence était susceptible de créer un doute, il faudrait, même dans ce cas, suivant l'art. 12, C.C., interpréter la section 86 de manière à lui faire remplir son intention évidente de fournir à la ville de

Saint-Jean par la taxe sur les propriétés mobilières et immobilières les moyens nécessaires de mettre à exécution tous les pouvoirs qui lui sont conférés par son acte d'incorporation. Je conclus que le pouvoir de taxer les immeubles est clairement donné.

Indépendamment de cette objection au pouvoir de taxer de la municipalité, on a aussi soulevé la prétention que les ponts de chemin de fer étaient exemptés du paiement des taxes, et on a même contesté à ce genre de propriété la qualité d'immeuble. Ces deux prétentions me paraissent également mal fondées. Par l'effet du statut, la compagnie est devenue en possession légale de cette partie du lit de la rivière sur laquelle repose le quai d'approche et les piliers qui soutiennent la superstructure du pont. Cette construction faite pour perpétuelle demeure sur cette partie du lit de la rivière, à l'occupation de laquelle la compagnie a un titre légal, a eu l'effet de faire de l'ensemble du pont une propriété immobilière d'un caractère privé appartenant à la compagnie et dont une moitié se trouve dans les limites de la ville. Il est indifférent que le lit de la rivière soit, comme il a été décidé dans *Holman v. Green* (1) au sujet du havre de Summerside, la propriété du gouvernement fédéral ou du gouvernement provincial comme l'a décidé la cour du Banc de la Reine dans *Normand v. la Cie du Saint-Laurent* (2), il n'en est pas moins vrai que dans un cas comme dans l'autre, cette partie du domaine public appropriée en vertu des lois de chemin de fer de la Puissance, tout aussi bien qu'en vertu des lois provinciales sur le même sujet, a cessé, au moins pour tout le temps qu'elle sera employée au passage du chemin, de faire partie du domaine public, de même qu'un lot de terre concédé par la couronne cesse de faire partie de son domaine et devient propriété privée et comme telle sujet à toutes les taxes

(1) 6 Can. S. C. R. 707.

(2) 5 Q. L. R. 215.

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et charges de la propriété privée. On arguerait donc inutilement pour soutenir que le pont n'est pas taxable, du fait qu'il est construit sur une partie du domaine public exempté de toutes taxes. Cette exemption est sans doute incontestable pour le domaine public, mais elle cesse d'exister lorsqu'il s'agit d'une partie de ce domaine devenue la propriété de particuliers. On ne peut pas plus appliquer à un pont ce privilège du domaine public qu'on ne le pourrait aux nombreux quais construits en eau profonde. Ces proprietés sont comme tous les autres immeubles sujets aux taxes imposées sur la propriété foncière.

Il est incontestable que le pont en question doit être d'après les lois de la province de Québec, comme d'après les décisions des tribunaux d'Ontario, *voir Niagara Falls Suspension Bridge Co. v. Gardner* (1), considéré comme une propriété immobilière et comme telle sujette à la taxe, à moins que l'on ne justifie d'une exemption.

Pour que le pont en question pût être reconnu exempt de taxe il faudrait trouver un texte de loi qui le déclare formellement, et il n'en existe pas à ma connaissance. Cette question intéresse à un très haut degré non seulement l'Intimée, mais encore toutes les municipalités, et elles sont nombreuses, dans les limites desquelles se trouvent des ponts de chemin de fer, et déclarer ce genre de propriété exempté de taxe, ce serait leur faire perdre un revenu considérable.

En vertu de la clause 98 de l'acte d'incorporation 43 et 44 Vic., ch. 62, la plus grande partie des clauses générales des corporations de ville sont rendues applicables à la dite ville de Saint-Jean.

Parmi ces clauses se trouvent les 326 et 327. La première ordonne aux compagnies de chemin de fer qui possèdent des biens-fonds dans la municipalité de transmettre au bureau du conseil, au mois de mai de chaque

(1) 29 U. C. Q. B. 194.

année, un état désignant la valeur réelle de ses propriétés immobilières dans la municipalité autre que le chemin, et aussi la valeur réelle du terrain occupé par le chemin d'après la valeur moyenne du terrain dans la localité. Cet état doit être communiqué à temps aux estimateurs. La seconde, 327, oblige les estimateurs à faire l'évaluation d'après l'état fourni par la compagnie et à défaut de transmission de cet état dans le temps prescrit ils sont obligés d'en faire l'estimation comme celle de tout autre contribuable.

L'état requis par ces dispositions n'ayant pas été fourni dans le temps prescrit, les estimateurs ont procédé à l'évaluation du pont et des autres propriétés au meilleur de leur jugement, en ayant toutefois le soin de n'évaluer que le terrain sur lequel passe ce chemin et non les travaux du chemin. Les estimateurs appelés comme témoins se sont expliqués à ce sujet dans leur témoignage de manière à faire disparaître le doute que l'on aurait pu soulever sur les expressions dont ils se sont servis. "Roadway" pour désigner le terrain acquis par la compagnie pour y passer son chemin ; ils disent positivement qu'ils ont fait la distinction voulue et n'ont pas taxé le chemin, c'est-à-dire les travaux du chemin.

Si maintenant l'Appelante trouve leur estimation trop élevée elle ne peut s'en plaindre à l'Intimée, dont les estimateurs ont agi avec bonne foi. Si l'état requis par la loi eût été fourni dans le temps voulu les estimateurs auraient été obligés d'en passer par la valeur déclarée par la compagnie.

Si l'estimation est trop élevée l'Appelante ne doit s'en prendre qu'à elle-même et doit subir la conséquence de sa négligence.

Après la confection de ce rôle, à l'homologation duquel l'Appelante n'a fait aucune opposition, elle avait encore en vertu de la sec. 200 des clauses géné-

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rales des corporations de ville, le pouvoir d'en faire prononcer la nullité pour cause d'illégalité, n'ayant pas adopté ce procédé dans le délai voulu le rôle est devenu finalement clos et ne peut plus être attaqué par le procédé auquel l'Appelante a eu recours.

L'Appelante a soulevé lors de l'argument devant la cour du Banc de la Reine des prétentions dont elle n'a fait aucune mention dans sa pétition. Une de ces prétentions est que l'acte 43 et 44 Vic., ch. 62 a créé une nouvelle corporation tout à fait différente et distincte de celle qui avait existé auparavant; que cet acte ne contenant aucune disposition pour maintenir en force le rôle de cotisation de 1880 les taxes de cette année-là ne pouvaient être recouvrées.

L'acte en question n'a pas créé une corporation nouvelle. C'est "un acte pour amender et consolider l'acte "d'incorporation de la ville de Saint-Jean et les divers "actes l'amendant." Ce dernier acte quant à la confection du rôle de cotisation et la perception des taxes n'est que la répétition de la loi antérieure copiée dans la nouvelle, et qui partant n'a cessé en aucun temps d'être en force. Il n'était donc pas nécessaire d'une disposition spéciale pour déclarer que le rôle fait antérieurement continuerait en force parce que la loi n'était pas changée sous ce rapport. Cette question a été décidée par cette cour dans la cause de *Sulte vs. Corporation de Trois-Rivières.* (1)

Je dois ajouter que dans le cas actuel cette question souffre moins de difficulté parce que les 7e et 117e clauses de l'acte 43 et 44 Vic., ch. 62 ont maintenu en force tous les règlements existants en déclarant:

Clause 7. Et tous les règlements, ordonnances, conventions, dispositions et engagements quelconques passés et consentis par le dit conseil ou le maire actuel ou leurs prédécesseurs en office, auront et continueront à avoir leur plein et entier effet, jusqu'à ce que les dits règlements, conventions et engagements aient été régulièrement

(1) 11 Can. S. C. R. 25.

rescindés et abolis,

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Et la 117e clause déclare :

Si quelqu'un transgresse aucun règlement fait par le conseil de ville en vertu du présent acte ou des actes par le présent abrogés, ou se met en contravention, etc., etc., sera passible de l'amende et de l'emprisonnement à défaut de paiement de telle amende suivant que spécifié en aucun des dits règlements.

Ces dispositions sont clairement suffisantes pour maintenir en force non seulement les règlements existants en vertu des lois d'incorporation antérieures, mais même les rôles de cotisation et de perception qui n'ont d'effet légal qu'après avoir été confirmé par ordre du conseil.

La même réponse s'applique à l'objection faite à la légalité du warrant. La loi antérieure 22 Vic., ch. 106, sec. 37, § 3, donnait à la dite corporation dans le cas de défaut de paiement des taxes le pouvoir de les recouvrer par warrant.

Cette même disposition a été conservée par la section 101 de 43 et 44 Vic , ch. 62. Cette disposition existait également dans la 40 Vic., secs. 377 et 378. Ces pouvoirs n'ayant jamais cessé d'être en force les procédés faits en vertu d'iceux sont de même restés en vigueur. Les objections soulevées à cet égard sont sans valeur.

Pour se prévaloir de l'objection faite à la collection des intérêts dus sur le montant des taxes, si elle était fondée, l'Appelante aurait dû s'en plaindre par une opposition à la saisie conformément à l'article 952 du Code Municipal.

Je suis d'avis que l'appel doit être renvoyé avec dépens.

HENRY J.—This case comes by appeal from the Appeal Court of Quebec. The main question to be decided is: Whether rates levied by the municipal authorities of the town of St. Johns on a railway bridge of the appellant company over the Richelieu river—one-half of which is within the limits of the

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town—for the year 1880 and the two following years were authorized by law? Provision for the assessment of railway companies by municipalities was made by sections 326 and 327 of the act 40 Vic. ch. 29; and it is upon the construction to be put on those sections and others that the rights of the parties herein are to be ascertained.

[The learned judge then read sections 326 and 327.]

It will then be seen that the municipal taxes on railway companies were limited to the real estate owned by the company in the municipality, other than the road and the actual value of the land occupied by the road, estimated according to the average value of land in the locality. Taxation otherwise was totally excluded.

The bridge in question is over a navigable river, and the title to the land over which it flows is in the crown held for public uses. The company by the erection of the bridge over it obtained and have no title whatever to the soil, and therefore it is not immoveable property of the appellant company. Such land is therefore not, as I think, real estate belonging to the company to which the act applies. The land under the bridge may be said to be land occupied by the road; but still it could not apply to the parts or portions of it occupied by the pillars of the bridge. The spaces under the circumstances could not be deemed as in the occupation of the company, when as to such spaces the maritime rights of the public remain unaffected by the superstructure. Nor do I believe the statute was ever intended to apply to such. What it meant was to authorize a tax on land belonging to companies exclusively occupied as the railroad, and I think we would be straining the provision in question to apply it to the bed of a navigable river.

That however is only incidentally necessary to be

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considered, for the taxes were not levied on the land of the navigable river; but upon that half of the superstructure within the municipality. It is claimed because the land under the bridge is used by the company, that, although belonging to the crown, it is liable to taxation, and a question would arise if the land had been alone taxed; but it is further claimed that because the land is in the occupation of the company, the bridge built on is immovable property within the provisions of the section hereinbefore in part recited.

The law as to fixtures on immovable property is what should govern in this case, and if so, I cannot regard the bridge in question as one.

The question is raised as one determining the ownership of machinery or other property placed on immovable property to determine whether it belongs to a tenant or a landlord. Is the bridge in question of that necessarily permanent connection with the land under it, that it would become the property of a landlord at the end of a tenant's term? It cannot be contended that a tenant during his term could not remove anything placed or erected by him on the devised property that was not a fixture. During the term, therefore, such could not be deemed a part of the the real estate. A building erected upon blocks laid on the soil may be removed by the tenant. The bridge in question must I think be regarded in the same way and I can see nothing, and know no law, to prevent the company from removing it if desirous of so doing. How then can it be called immovable property, and if not how can it be rated as such? If the company failed to return a valuation of the immovable property in the municipality, the valuators could do more than tax immovable property, they could not tax movable property, nor could they in my opinion tax the bridge in question.

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The statutes exempt the rails, ties, and everything else composing a railway, on or even below the level of the railway track, including masonry in culverts, bridges, and other erections on the immovable property of companies. Then why should not the bridge in question be exempt? If it had been built on land of the company liable to be taxed, the bridge would not be liable to taxation. Then why should the fact of its having been built over some other party's land, liable or not to be taxed, make the slightest difference? It may be said, however, that as an appeal is given by section 331 of 40 Vic. ch. 29 from the tax roll to the council of the municipality, the appellants not having taken such appeal and the roll having been homologated, they have no other remedy against the illegal assessment. Section 323 provides that:—

> It shall be the duty of the valuators in office to make annually, at the time and in the manner ordered by the council, the valuation of the taxable property of the municipality according to real value.

The duty of the valuators is, therefore, confined to taxable property, and it is from their acts as such valuators within the scope of their authority that any person feeling aggrieved may appeal. The homologation of the roll, therefore, in my opinion, affects only taxable property.

I am, for the reasons given, of opinion that the appellant company is entitled to the remedy by injunction as sought in this action, such remedy being within the provision of the statute of Quebec in relation to injunction, with costs.

TASCHEREAU J.—As to the contention that the act extending the limits of the town of St. Johns to the middle of the Richelieu river is unconstitutional, because the said river, being navigable, is under the exclusive control of the federal parliament, there is

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nothing in it.

As to the second ground of appellants' petition, that movable property only is taxable by the charter of St. Johns, it is also untenable. By a misprint in the French version of the act the word immoveables has been left out, but the context of that version itself shows that immoveables are taxable, and the English version contains the word "immoveables." The appellants did not press this ground of their petition at the argument.

The third ground of the appellants' petition is that they are not proprietors, and not in possession of a part of the property assessed. On this the judge at the trial found, and his finding is fully supported by the evidence, that the company is in possession of all the property assessed.

Now section 370 of 40 Vic. ch. 29, which is part of the charter of St. Johns by section 98 thereof, specially provides that all municipal taxes may be collected from the tenant or occupant of the land.

The fourth, fifth and sixth grounds of the appellants' petition are general ones, that the corporation has acted illegally and beyond its powers in the assessment of the said property and in issuing the warrant of distress. Under these general allegations, the appellants take two distinct objections, one attacking the whole of the assessments for the four years, and the second one attacking the assessment of 1880 only. The first, which applies to all the taxes claimed on the part of the appellants' road on *terra firma*, is that only the land occupied by the road is taxable and not the road bed itself under section 326 of 40 Vic. ch. 29. This section reads as follows:—

Every iron railway company or wooden railway company possessing real estate in the municipality, shall transmit to the office of the council in the month of May in each year, a return showing the actual value of their real estate in the municipality other than the

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road, and also the actual value of the land occupied by the road estimated according to the average value of land in the locality. Such return must be communicated to the valuators by the secretary treasurer in due time.

It is in evidence here that the company never sent to the corporation the return mentioned in this section and consequently according to the very next section of the said act, their property had to be taxed, as that of any other proprietor in the municipality, viz:—

The valuators in making the valuation of the taxable property in the municipality, shall value the real estate of such company according to the value specified in the return given by the company. If such return has not been transmitted in the time prescribed, the valuation of all the immovable property belonging to the company shall be made in the same manner as that of any other rate-payer.

We have been referred to the case of the *Great Western Co.* v. *Rouse* (1), in which it was held that only the land occupied by the railway and not the superstructure is taxable. But this case has no application here, because the statute of 1853, U. C. Assessment Act, 15 Vic. ch. 182 sec. 21 does not provide, as the Quebec statute I have cited does, that if the company fails to make a return to the council the valuation of all its immovable property shall be made as that of any other ratepayer. The two cases of the *Corporation of London* v. *The Great Western Railway Co.*, (2) decided under 29 and 30 Vic., ch. 53, sec. are distinguishable on the same ground.

Now as to the taxes of 1880;—

The appellants argue that for 1880 the respondent cannot claim the taxes, because the old corporation was abolished on the 24th July of that year, by 43 and 44 Vic., ch. 62, and the new one then came into existence.

I do not see any foundation for this contention.

The act 43 and 44 Vic., ch. 62, does not create a new corporation.

(1) 15 U. C. Q. B. 168. (2) 16 U. C. Q. B. 500 & 17 U. C. Q. B. 262.

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The corporation of the town of St. Johns, as created by 22 Vic. ch. 106, (1858), under the very same name, is continued with extended powers and extended territorial jurisdiction. Section 7 specially enacts that all the officers then in office shall be continued until duly removed or the expiration of their functions, and as I read this clause, with all the powers and duties of their offices. This seems to me unquestionable. If the officers are continued, it must be with the view that they should fill the duties of their offices. Now this valuation of 1880 must have been made after the new act was in force and after the 24th July, since in express terms it includes that part of the bridge within the limits of the town and the bridge was not within the limits of the town before that act was passed. By section 23 of 22 Vic., ch 106, there was no special date fixed to make the roll. This was left to the council, though by 37 Vic., ch. 95, sec. 1, it had to be made every year. Now the appellants not having proved that the roll of 1880 was made before the 24th July, we must follow the rule *omnia præsumuntur ritè esse acta.*

But even if the roll had been made before the 24th July, as it is proved that even before the new act 90 feet of this bridge were within the limits of this municipality, and as the roll taxes part of the bridge within the municipality, we should read it as taxing these 90 feet.

As to the amount of the valuation we have nothing to do with it. No question on it can arise before us on a writ of injunction under section 1 of 41 Vic., ch. 14.

The enactments as to assessments in the new act did not come in operation until 1881, and the prior ones continued in force till then according to sections 8 and 11 of 49 and 50 Vic., ch. 95, which are re-enactments of the Interpretation Act, made in express terms

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applicable to the charter of St. Johns by its last clause, no doubt to cover this point.

They read as follows :—

Sec. 8. When any provisions of a statute are repealed and others substituted therefor, the provisions repealed remain in operation until the provisions substituted become executory under the repealing statute.

Sec. 11. Unless the repealing statute otherwise provides all acts, proceedings or things done or begun and all rights acquired in virtue of the provisions of any statute afterwards repealed may be continued, completed, and exercised under such provisions, notwithstanding such repeal, by observing, in so far as applicable, the procedure set forth in the new act.

As to the distress warrant to levy taxes, the enactments of the new charter are similar to those of the first.

It has been urged on the part of the appellants that this bridge is not taxable at all. But this is erroneous. It is immovable property and therefore subject to taxation. See *The Niagara Falls Suspension Bridge* v. *Gardner* (1.)

Another objection taken by the appellants is that the interest accrued on these taxes could not be levied by warrant of distress. By sections 368 of 40 Vic. ch. 29, which is incorporated in the St. Johns charter, interest runs on all taxes from the date that they become due.

The appellants contention is that though for the taxes themselves a warrant of distress can issue the interest thereon is recoverable only by action. I cannot accede to this proposition. The interest is a part of the taxes due to the corporation, and it would require a very clear text, and a novel one it would be, to convince me that the mode to recover the capital is not the same as that to recover interest. In an analogous case, *Baker* v. *Kelly* (2) the judge delivering the judgment of the Superior Court of Minnesota said:

(1) 26 U. C. Q. B. 194. (2) 11 Minn. 480.

"I can see no reason why the interest and costs should "not follow the tax and be collected in the same "manner." Such is my view of the question.

I am of opinion, therefore, that the present appeal should be dismissed with costs.

GWYNNE J.—The assessments and rates made and imposed for the years in question from 1880 to 1883 inclusive, are, in my opinion, clearly illegal and void. By the 98th sec. of 43 and 44 Vic. ch. 62, intituled "An Act "to amend and consolidate the act of incorporation of "the town of St. Johns and the several acts amending "the same," it is enacted that sections 326 and 327 together with several other sections of The Town Corporation General Clauses Act 40 Vic. ch. 29 shall form part of 43 and 44 Vic. ch. 62. By these sections provision is made for the manner in which real estate, and prescribing what real estate, of railway companies, shall be assessed by the municipality in which such real estate is situated.

By these sections it is enacted. [The learned judge then read sections 326 and 327 (1).]

Now, the manner to be adopted with other ratepayers is prescribed by the 323 section, which declares it to be the duty of valuators to make the valuation of the taxable property of the municipality according to real value, and that they shall also make a valuation of the annual value of such property, and shall enter it on the roll in a separate column. In case the return is made by the company, as directed in the 326 section, the valuators shall adopt the valuation given by the company, but if no such return be made they shall value the taxable property according to their own estimate of its real value. It is in either case only the taxable property that is to be assessed.

(1) See pp. 307-8.

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Now, these sections 326 and 327 owe their origin to the Lower Canada Municipal and Road Act of 1855, 18 Vic. ch. 100 sec. 4, which in its turn owes its origin to the Assessment Laws Consolidation Act of Upper Canada 16 Vic. ch. 182 sec. 21. Under this act it was decided by the Court of Queen's Bench for Upper Canada, when the late Sir John Robinson was Chief Justice of that court, in the case of *The Great Western Railway Co.* v. *Rouse* (1), that the language was too clear to admit of a doubt, and that it exempts, and that the intention of the act was clearly to exempt, all the superstructure, such as the iron, rails, bridges, &c., &c., from all liability to assessment, and that as to the roadway, all that is assessable is the land occupied by the railway, according to the average value of land in the locality; and further, that the decision of the County Court Judge (to whom an appeal had been taken) maintaining an assessment of superstructure was not final, the question not being as to over valuation of property liable to be assessed, but whether there was any authority to assess the superstructure at all; and in *London* v. *The Great Western Railway Co.* (2), it was held by the same court that as the municipality had no right to assess superstructure the objection could be taken in an action, although there had been no appeal taken to the County Court Judge; that the appeal given to the County Court Judge, whose decision thereon was by the statute made final, was only for over valuation of property liable to be assessed, and that the municipality could not, whatever the form of proceeding, recover a rate illegally imposed. These are, in my opinion, sound judgments which should be sustained. Now, in the present case it is shown in plain terms by the assessment rolls, that the assessments and rates which are objected to were imposed on superstructure, namely, on "railway tracks

(1) 15 U. C. Q. B. 168. (2) 17 U. C. Q. B. 264.

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"from East Longueil to bridge," and for "part of railroad "bridge within the limits of the town of St. Johns."

The "railway tracks" so assessed consist not only of "the land occupied by the road," but of the wooden sleepers and the iron rail laid down thereon, which is what constitutes the "railway track." And as to the bridge, which appears to be across the river Richelieu, the bed of which is vested in the crown, and is, as such, exempt from taxation, it is a structure erected for no other purpose than to bear the iron rail, which with its supports constitute the track across the river. This structure takes the place of sleepers laid on level ground. The railway being required to cross the river (the bed of which is in the crown) had, of necessity, to be supported by a structure different from that which is required to support the rails on land. The bridge, therefore, which is erected over the bed of the river which is vested in the crown, is in all its parts superstructure and constitutes the "railway track" over the river, and the statutable direction to estimate the value of the land occupied by the road according to the average value of land in the locality is wholly inapplicable to such a structure. Then it is clear by the 79th section of 43 and 44 Vic. ch. 62, that the process given to have the valuation or assessment rolls reviewed at the instance of persons considering themselves aggrieved by the assessment, applies only to cases of complaint as to excessive valuation, of assessable property. But the rates, which are here objected to, having been wholly illegally imposed that is to say, imposed upon property not liable to assessment, the warrant to levy rates so imposed, is void as *ultra vires* of the corporation of St. Johns, and the proceeding by injunction to restrain the enforcement of such warrant is an appropriate remedy expressly given by the statute 41 Vic. ch. 14 of the Province of Quebec.

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I can see no objection to the limits of the town being extended to the middle of the river by a provincial statute, and my judgment proceeds upon the assumption that they are effectually so extended.

For the reasons already given the appeal should, in my opinion, be allowed with costs and the judgment of the Superior Court should be varied thus: Considering that there is error in the judgment of the Superior Court and that the assessments made and rates imposed for the years 1880 to 1883 inclusive, are illegal and void, as having been made on the railway track, and on the railway bridge crossing the river Richelieu, so far as the same are within the limits of the town of St. Johns, which being superstructure only and not "land occupied by the roadway" were not liable to be assessed and rated; and considering that the warrant to levy such illegal rates is illegal and void, order the said warrant to be quashed and enjoin the corporation to desist from all proceedings to enforce the same with costs (*distraits*) to the petitioners' solicitors.

Appeal allowed with costs (1).

Solicitors for appellants: *Church, Chapleau, Hall & Nicolls.*

Solicitors for respondents: *Robidoux & Fortin.*