

THE CITY OF HALIFAX.....APPELLANTS ; 1879

AND

*June 4.

THOMAS E. KENNY,.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Assessment of Ships—37 Vic., c. 30, sec. 1, and 27 Vic., c. 81, Rev. St.
N. S.—*Vessels not registered in Halifax not liable.*

K. resides and does business in the city of *Halifax*, and is owner of ships which are not registered at the City of *Halifax*, and which have never visited the Port of *Halifax*. Under the authority of 37 Vic. c. 30 sec. 1 and 27 Vic., c. 81 secs. 340, 347, 361, Rev. St. *N. S.*, the assessors of the City of *Halifax* valued the property of *K.* and included therein the value of said vessels.

Held: That vessels owned by a resident, but never registered at *Halifax*, and always sailing abroad, did not come within the meaning of the words "*whether such ships or vessels be at home or abroad at the time of assessment,*" and therefore were not liable to be assessed for city taxes.

APPEAL from a judgment rendered by the Supreme Court of *Nova Scotia* in favor of the respondent on a special case submitted to that court for determination.

The following is the special case entered :

"Case entered into by consent of parties for argument before the Supreme Court at *Halifax*, between the City of *Halifax* and *Thomas E. Kenny*.

"*Thomas E. Kenny* resides and does business in the City of *Halifax*, and is the owner of ships which are not registered in *Halifax*.

"The assessors of the City of *Halifax* have valued the property of the said *Thomas E. Kenny* liable for city rates, and have included therein the value of said vessels,

*PRESENT :—Ritchie, C. J., and Strong, Fournier, Henry, Taschereau and Gwynne, J. J.

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as if they had been within the city at the time of assessment. Said vessels were never in the port of *Halifax*.

"The question for the opinion of the court is—whether or not the said *Thomas E. Kenny* is liable, under the laws in force in relation to the City of *Halifax*, to be assessed for city taxes in respect to said vessels, or on account of his being the owner of them.

"If the Court should be of opinion that the said *Thomas E. Kenny* is liable to pay such taxes, judgment to be entered against him for the City of *Halifax* for the costs of preparing this case and argument, otherwise judgment to be entered for the said *Thomas E. Kenny* against the City of *Halifax* for such costs.

"It is, however, expressly agreed, that this case shall not stay or interfere with the collection of the rates for this year, and no judgment shall involve the repayment by the city of any rates already assessed."

The statutes which bear upon the question are the following :

37 Vict., c. 30, s. 1, (1874) :

"The city council shall have power to assess on the inhabitants and the property *within the city annually*, such sum of money not exceeding one hundred thousand dollars, as may be necessary to defray the expenses which are by law authorized to be incurred on behalf of the city."

(This is, so far as this question is concerned, a re-enactment of section 330 of 27 Victoria, c. 81, (the city charter). Section 330 was repealed and a new section substituted by 33 Vic., c. 47 ss. 1 and 2. The substituted section last aforesaid was itself repealed, and the section above set forth substituted therefor.)

27 Victoria, c. 81, (The Halifax City Charter of 1864.)

"s. 340. The assessment shall be rated on the occupants of real estate, being yearly tenants, and in all other cases on the owners of property, by an equal

pound rate upon the value of the real and personal estate within the city, whether such real and personal estate shall be possessed, occupied or owned by individuals, or by any joint stock company or corporation, and whether owned by parties resident or absent, according to the best knowledge and discretion of the city and ward assessors, subject to the exemptions hereinafter specified. The city council may direct the assessment to be made in the autumn of any year for the ensuing year, after the assessment has been made and the city rates imposed."

"Sec. 347. Under the term 'personal estate,' shall be included all household furniture, moneys, goods, chattles, wares and merchandise, kept in public or private premises, or in the Queen's or other public warehouses: all ships and vessels, or shares in ships or vessels, owned by persons residing or having offices, or doing business within the city, whether such ships or vessels *be at home or abroad at the time of assessment*; also all public stocks, except provincial and city debentures of the said city of *Halifax*: there shall also be included under the term personal estate, stocks in public or private banking companies, water, gas, fire, marine, or life insurance companies, or associations, or other joint stock companies or corporations, whether public or private, doing business within the city; and all moneys belonging to the inhabitants of the city, invested in public or private securities within the city, and all bullion and coin, of gold or silver, all province notes, and notes of solvent banks, in the province or elsewhere, which may be in the possession, and the property of any citizen, or in the custody of a bank, or other party, or moneys deposited on deposit receipt, shall be considered as his moneys, and be assessed accordingly."

"Sec. 361. As soon as the whole amount of real and personal property, on which any person, company, or

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corporation is to be assessed *within any ward* of the city, is determined, the city assessor shall serve or cause to be served a notice of such valuation upon the person assessed, or his agent, or on the company or corporation, their officer, clerk, or agent. This notice shall be in the following form, in print or ink:

Ward No.	NAMES.	Value of Real Estate as tenant or owner.	Value of personal property.	Total amount on which Assessment is to be levied.

"I hereby give you notice that the assessors, to the best of their judgment, have made the above valuation of your real and personal estate *within* ward No.— of the city of *Halifax*, on which assessment for the current year is to be levied. If you wish to object thereto you are hereby notified to furnish me at my office in the city Court House, within fourteen days from this date, with a written statement under oath according to the form herewith served upon you."

"To Mr.

City Assessor.

Dated at *Halifax*, day 18 "

These notices are to bear date on the days which they are respectively served.

"After the service of the notice, fourteen days shall be allowed to the parties to be rated, or their agents, to furnish the city assessor with a written statement under oath of the real and personal estate in the following form:

Statement of real and personal property WITHIN Ward No.—of the City of Halifax, LIABLE TO ASSESSMENT.

\$ cts.

1. Real estate in possession of subscriber not rented to yearly tenants, estimated at ten times the yearly rent or value

2. Household furniture and movable property in dwelling and premises occupied by subscriber.....
3. Goods, wares and merchandize, within the ward.....
4. Moneys in possession or in bank, &c.
5. Ships or vessels, or shares and interest therein, whether at home or abroad.....
6. Moneys invested in mortgage, or other security whatever, in the city.....

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Total amount.....\$”

“In making this statement, each item or class of property shall be separately valued; and the amount admitted under each of the six classes of assessable property shall be separately stated; and the assessor shall not be bound to adopt such statement where each is not expressly valued.”

“*The return of ships or vessels or shares therein shall, in every case, be made by the party rated in the affidavit or return by him or them made, in the ward in which such person shall reside. Such return or statement shall be verified in every instance by an affidavit in the form following:*”

39 Vict., Chap. 32, s. 10.

“The failure to levy a Poll Tax has not affected nor shall it affect or diminish the validity or legality of any assessment made and levied within the City of *Halifax*.”

Mr. *Cockburn*, Q. C., for appellants:

The point is whether a ship is *at home* at *Halifax* because her owner lives at *Halifax*. There are a number of authorities which establish beyond a doubt that a state can tax persons residing in the state for the per-

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sonal property outside of the state. I submit also, that on the principle "that personal property follows the person," and the property in question being movable and personal, and the Respondent's residence in *Halifax* being admitted (that being necessary to give jurisdiction to the city authorities), the case falls clearly within the scope of the Act above cited.

The case of *Nickle v. Douglas* (1), relied on by respondent, is not applicable, for under the Act of the *Ontario* Legislature personal property within the Province was alone assessable, and the property taxed was stock in a bank doing business outside the Province.

That the Legislature of *Nova Scotia* has power, for municipal purposes, to authorize the assessment of personal property elsewhere, but owned by persons within the Province, is undoubted, and the only question here is whether the Legislature have clearly exercised that power, which, it is submitted, must be established from a correct construction of the statute referred to.

The learned counsel relied on the following authorities: *Bulstrode*, p. 355; *Tupper v. Treasurer of the Hospital of St. Peter Port* (2); *The King v. Hull Dock Co.* (3); *Re Ewing* (4); *Thompson v. Advocate-General* (5); *Minturn v. Hays* (6); *Peabody v. County Comrs.* (7); *Reman v. Shepherd* (8); *Barratt v. Henderson* (9); *Re Hood's Estate* (10); *Lott v. Mobile* (11); *Hilliard's Law of Taxation* (12).

Mr. *Gormully* for respondent:—

In order to interpret secs. 340 and 347 conferring the power of assessment they should be read together, and

- (1) 37 U. C. Q. B. 51.
- (2) 3 Knapp 406.
- (3) 3 B. & C. 516.
- (4) 1 Cr. & Jer. 151, 158.
- (5) 12 Cl. & F. 1.
- (6) 2 Cal. 590.

- (7) 10 Grey Mass. 97.
- (8) 27 Ind. 288.
- (9) 4 Bush 225.
- (10) 21 Penn. 106.
- (11) 43 Al. 578.
- (12) Pp. 5, 7, 116, 117, 125, 128, 138.

it will then be seen that the probable legislative intent was to authorize first the assessment of all inhabitants in respect of their property within the city, and then the assessment of all non-residents in respect of their property within the city. Possibly more felicitous language could have been found which would have defined more clearly and precisely the extent and the limits of the power intended to be conferred. But if the language used is at all vague or uncertain, if it gives rise to a reasonable doubt in the mind of the Court whether the right to assess personal property is confined to personal property within the city or not, then the appellants, by virtue of a familiar canon of construction applicable to all tax laws, must certainly fail. The canon referred to is that "every charge upon the subject must be imposed by clear and unambiguous language." In *Wroughton v. Turtle* (1), *Parke*, B., says, that it is a well settled rule of law that every charge upon the subject must be imposed by clear and unambiguous words. See also *Cooley* on taxation (2), where a number of the English authorities are collected; *Nickle v. Douglas* (3). The cases cited by the appellant are not applicable, they are founded on the maxim of jurisprudence that personal property follows the person, which is not applicable to the present case.

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The maxim should be confined in its operation to cases of bankruptcy, marriage and succession.—(See *Wharton* conflict of Laws. s. 311). It has no application to such property as ships, which have an actual *situs* when considering their locality for taxing purposes. The actual *situs* of a British ship for taxing purposes is her home port and her port of registry. This was the decision in *The King v. White* (4), cited in Mr. Justice *Weatherbe's* judgment; it was also so decided by the

(1) 11 M. & W. 567.

(3) 37 U. C. Q. B. 51.

(2) Pp. 200 and 201.

(4) 4 Durn. & E. 771.

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Supreme Court of the *United States*, in *Hayes v. The Pacific Mail Co.* (1), and *Morgan v. Parham* (2).

All principle and all analogy to be derived from statutes in *pari materiâ* seem to favor a construction which would, if possible, cut down the jurisdiction of the appellants to property within their territorial limits.

THE CHIEF JUSTICE :

I think this property could not be taxed. Under the act, I think, the rate upon the value of the real and personal estate means the real and personal estate *within* the city, it does not mean by fiction of law property which is in *England*. As regards ships, at *home* or *abroad* at the time of assessment, it must mean ships which have been registered at *Halifax*, the Port of Registry of a ship being her home port. It is too late now to raise the question whether appellant's vessels should have been registered at *Halifax*, *Halifax* being the place of the owner's residence. We must assume the vessels were properly registered. There can be no doubt, as the case is put, that the appellant's vessels were not registered at *Halifax*, and have never been in *Halifax*, and so never were at home in the port of *Halifax*, nor actually or constructively *within* the city of *Halifax*, and therefore do not come within the terms of section 347, of 27 Vic. ch. 81. *Rev. St. N. S.*, which says :

All ships and vessels, or *shares* in ships or vessels * * *
 whether such ships or vessels *be at home or abroad* at the time of
 assessment.

Under these circumstances, I think the appeal should be dismissed with costs.

STRONG, FOURNIER, and TASCHEREAU, J. J., concurred.

(1) 17 How. U. S. R. 596.

(2) 16 Wallace 472.

GWYNNE, J :—

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The reasons given by the court below are conclusive, and I concur with the Chief Justice that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for appellants : *Wm. Sutherland.*

Solicitor for respondent : *J. N. Ritchie.*
