1904
May 17, 18.
*June 8.

THE DOMINION IRON AND STEEL COMPANY (PLAINTIFFS)..... } APPELLANT;

AND

JOHN McDONALD (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Assessment and taxes—Exemption—Railways—R. S. N. S. (1900) *c.* 73—*Imposition of tax—Date—Municipal Act—R. S. N. S.* (1900) *c.* 70.

Sec. 3 of R. S. N. S. (1900) ch. 73 (Assessment Act) exempted from taxation "the road, rolling stock * * used exclusively for the purpose of any railway, either in course of construction or in operation, *exempted* under the authority of any Act passed by the legislature of Nova Scotia." Prior to the passing of this Act the appellants' railway had always been exempt from taxation but all former assessment Acts were repealed by these Revised Statutes so that it was not "exempted" when the latter came into force. By 2 Ed. 7., ch. 25, assented to on March 27th 1902, the word "exempted" was struck out of the above clause and in May, 1902 the appellants were included in the assessment roll for that year for taxation on their railway.

Held, by Taschereau C. J., that under the above recited clause the railway was exempt from taxation.

Held, by Sedgewick, Davies, Nesbitt and Killam JJ. that if the railway could be taxed under the Assessment Act of 1900 the rate was not authorized until the amending Act of 1902 by which it was exempt had come into force and no valid tax was, therefore, imposed.

APPEAL from a decision of the Supreme Court of Nova Scotia in favour of the defendant on a case stated between the parties.

The following is the case stated for the opinion of the court.

"1. The plaintiff is a body corporate, whose chief place of business is at Sydney, in the County of Cape Breton.

*PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Davies, Nesbitt and Killam JJ.

The plaintiff is and was, at all times hereinafter referred to, the lessee of certain property belonging to the Dominion Coal Company, Limited, a certain other body corporate, doing business in the County of Cape Breton. Such property, of which the plaintiff is and was lessee as aforesaid, included the road, rolling stock, bed, track, wharves, station houses, buildings and other plant of or used in connection with that certain railway system owned by the said Dominion Coal Company, Limited, and known as the Sydney and Louisburg Railway, the same being hereinafter referred to as "the property." The property is and was used exclusively for railway purposes, namely, for the purpose principally of carrying coal from mines of said Dominion Coal Company, Limited, leased to plaintiff, and also of carrying passengers and freight by railway and the operating of a railway between Sydney and Louisburg, and the same is wholly situate within the county of Cape Breton aforesaid, and is and was used exclusively for railway purposes, and is and was in operation under the authority of an Act of the Legislature passed by the province of Nova Scotia and has been so used and operated under the authority of said Act since a date prior to the first day of January, 1901.

"2. That previous to the coming into force of the Revised Statutes of Nova Scotia, 1900, the property was exempt from taxation by virtue of chapter 44 of the statutes of Nova Scotia for the year 1892, and chapter 5 of the statutes of Nova Scotia for the year 1895. Said chapter 44 of the Acts of 1892 was repealed by said chapter 5 of the Acts of 1895, and said chapter 5 of the Acts of Nova Scotia, 1895, was repealed immediately upon the coming into force of the Revised Statutes of Nova Scotia, 1900, hereinafter referred to.

"3. That under and by virtue of the provisions of chapter 73 of the Revised Statutes, 1900, the assessors

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

for the districts of the municipality of the county of Cape Breton, within which the property was situate, assessed the respective portions of the same respectively situated within the said respective districts, and prepared and completed the assessment rolls respectively for the said respective districts in the form prescribed and pursuant to the provisions of said chapter, and duly signed said respective assessment rolls after having first duly attached to each roll the certificate required by said chapter to be made by said assessors, and prior to the 15th day of November, 1901, and within the time limited by said statute, duly forwarded and returned to the clerk of the Municipality of the County of Cape Breton aforesaid, said assessment rolls for the said several districts. The plaintiff in and by said assessment rolls was assessed in respect of the property in said several districts in the following amounts, as follows, namely :

District.	Amount of Assessment on "The Property"
Old Bridgeport	$ 300,000
Hillside	15,000
Louisburg	16,000
Bridgeport	6,000
Port Morien	48,000
Catalone	16,500
Sydney Forks	18,000
Lingan and Victoria Mines	18,000
Bateston	24,000
	$ 461,500

"4. Forthwith upon the completion of the said assessment rolls, the assessors of said districts duly gave notice of the assessment in accordance with the requirements and provisions of section 16 of said chapter 73.

"5. That on or before the 4th Tuesday of December, 1901, the assessment roll for each polling district in the said municipality of the county of Cape Breton,

was duly revised and corrected by the Board of Revision and Appeal for said municipality and a true copy of such assessment roll for each of said districts as aforesaid was duly transmitted by the said clerk of the municipality to the assessors for each of such districts, who did forthwith post up the same in some public and conspicuous place within each of such districts in pursuance with requirements of section 34 of said chapter 73.

" 6. No appeal was asserted from the said assessments of " the property " or from any part thereof by the plaintiff or by the Dominion Coal Company, Limited, or by any person or persons whomsoever. The court for the hearing of appeals from the assessments duly met for the hearing of such appeals in the County Court House, at Sydney, in the county of Cape Breton on the fourth Tuesday of January, 1902, and all appeals were duly heard, and all reductions and increases of assessments rendered necessary by the decision of the said court as well as all transfers of assessments from one person to another, and all other necessary changes, corrections, alterations and additions made by said court were duly written or minuted upon the assessment roll by the said municipal clerk in red ink in pursuance of the requirements of said section 48 of chapter 73.

" 7. The assessment roll as finally passed by the said court was duly certified by the said clerk of the said municipality as so passed in pursuance of the provisions of section 61 of said chapter 73, and the said assessment roll as finally passed and certified as aforesaid was by the said clerk of the municipality laid before the Municipal Council for the said municipality at its next regular meeting, which meeting took place at Sydney aforesaid, commencing on Tuesday, the 6th day of May, 1902, and was the first annual meeting

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

held by the said Municipal Council after the completion of said assessment roll as aforesaid.

"8. The said Municipal Council at said meeting duly made estimates of all sums which were required for the lawful purposes of the municipality for the then current year, making due allowance in such estimates for the abatements, losses and expenses which may occur in the collection of the taxes, and for taxes which may not be collected or collectable; and at said meeting, the said Municipal Council did duly authorize the levying and collection of a rate of so much on the dollar on the assessed value of the property and income assessed in the assessment roll as the Council deemed sufficient to raise the sum required to defray the expenses of the said municipality for the then current year including any deficiency from any preceding year pursuant to the requirements of section 125 of chapter 70 of the Revised Statutes, 1900. The rate so authorized as aforesaid was——— on the dollar.

"9. The clerk of the said municipality as soon after the first day of April as the provisions of chapter 73 permitted, determined from the said assessment roll the municipal rate and poor rate, and did prepare a collection roll for each district in each municipality in pursuance of the requirements of section 71 of the said chaptre 73. The following are true and correct extracts from such collection rolls as aforesaid, and contain all matters relating to the property:

Name of District.	Valuation.	Percentage for Municipal Rate.	Amount of Municipal Rate.	Percentage of Poor Rate.	Amount of Poor Rate.	Total Amount of Municipal and Poor Rate.
	$	$	$	$	$	$
Old Bridgeport.	30,000	2 40	720.00	.21	63.00	783.00
Hillside	15,000	2.04	306.00	none.	none.	306.00
Louisburg	16,000	2.10	336.00	2.07	11.20	347.20
Bridgeport.....	6,000	2.20	132.00	.35	21.00	153.00
Port Morien ...	48,000	2.08	1000.00	none.	none.	1000.00
Catalone.....	16,500	2.00	330.00	none.	none.	330.00
Sydney Forks..	18,000	2.00	360.00	.42	75.60	435.60
Lingan and Victoria Mines..	18,000	2.08	374.40	.40	72.00	446.40
Bateston.....	24,000	2.00	480.00	.06	14.40	294.40
Totals $461,500		--	$4639.20	—	$257.20	$ 4926.40

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

"10. The said chapter 73 of the Revised Statutes, 1900, is a revision, classification and consolidation of said chapter 5 of the statutes of Nova Scotia for the year 1895, and such revision, classification and consolidation are contained in the report of the commissioners appointed to revise, classify and consolidate the public general statutes of Nova Scotia. Such report of the said commissioners was made in writing and not printed, and did not and does not contain in section 4, subsection (p), of said chapter 73, so revised, classified and consolidated as aforesaid, the word "exempted." The said word was, however, written in lead pencil in the margin of the said report opposite said subsection with a mark of interrogation after it, by some person unknown, and not by any of the commissioners appointed to revise the said statutes. The said word "exempted" was not inserted in said report by any alteration or amendment made by said commissioners, but the said word "exempted" was printed erroneously and accidently.

"11. The Revised Statutes of Nova Scotia, 1900, were duly brought into force on the first day of February, 1901, by virtue of a proclamation of the Lieutenant-Governor of Nova Scotia in Council, duly made and dated the 24th day of December, 1900, under and by virtue of the provisions of chapter 44 of the Acts of the Province of Nova Scotia for the vear 1900.

"12. The whole of the said report of said commissioners was printed pursuant to section 2 of said chapter 44 of the Acts of Nova Scotia for the year 1900; also the Acts and parts of Acts referred to in section 2 were incorporated with the chapters referred to in said section, and the amendments of said section referred to were made therein, and the schedule "A" referred to in said section amended accordingly. A printed roll of said chapters and amended schedule referred to in

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

section 5 of said chapter 44 was duly attested under the signature of the Lieutenant-Governor and countersigned by the Provincial Secretary and deposited in the office of the Provincial Secretary pursuant to the provisions of section 5 of chapter 44, and after such deposit as aforesaid the Governor in Council duly made a proclamation hereinbefore referred to, which is contained in pages 3 to 5, inclusive, of volume 1 of the Revised Statutes of Nova Scotia, 1900, and is hereby referred to by the parties hereto and made a part of this case. The said printed roll contained said chapter 73; but sub-section (p) of section 4 thereof contained the following word, "exempted," as will appear on reference to said chapter at page 621 of volume 1 of the said Revised Statutes, and the said chapter 73 as printed in said Revised Statutes is a true and correct copy of the roll so printed and deposited as aforesaid.

"13. By chapter 25 of the Acts of the Province of Nova Scotia for the year 1902, it is enacted that the said word "exempted" be stricken out of the said subsection (p) of section 4 of the said chapter 73 of the Revised Statutes of 1900, and said chapter 25 was passed on the 27th day of March, 1902.

"14. On the 17th of January, 1903, the solicitor for the Municipality of the county of Cape Breton received from the solicitors of the Dominion Iron & Steel Co. the following letter:

"The Dominion Coal Company, Limited, has authorized us to state that, upon being shown the records of the various sections, that assessment was actually made af the right of way of the Sydney and Louisburg Railway, it will pay the amount assessed.

"In other words, if it is clear that the amount you state was actually assessed, the Company will give you a cheque immediately.

" It desires at the same time to point out that this county is the only county in the province to take advantage of what was well known to the whole country to be simply a slip of the Commissioners—a slip which was rectified at the next session of the House—and it also desires to state that in its opinion an unfair advantage has been taken of what is well known to the whole of Nova Scotia, including the Warden and Councillors of this county, as simply a printer's error.'

" And on the 14th of February, 1903, the solicitor of the said Municipality of the county of Cape Breton received from the solicitors of the Dominion Iron and Steel Co., the following letter :

" Re county assessment against Coal Company. Referring to the recent letter which I sent you, stating that the Dominion Coal Company would pay the amount of the claim of Cape Breton county for taxes. You remember that the Warden stated that he took the responsibility of saying that there was no mistake in having the word 'exempted' inserted in the clause (p) of section 4, chapter 73 R. S. I had reason to believe that there was a mistake, but I had nothing official, and I supposed that the Warden had received something official when he stated publicly that there was no mistake.

" Now I find that his authority was some legal gentleman in Halifax, who examined the original draft for him.

" I have a letter from Mr. F. H. Bell, one of the commissioners, who revised the statutes, and I enclose a copy of this letter. I am advised that Judge Graham, Hon. A. Drysdale and Mr. F. T. Congdon and Mr. A. A. McKay, will all subscribe to the statement contained therein.

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

"We, therefore, shall be obliged to ask the warden to recall this statement, which he made in public, and we are also obliged to recall the letter which we wrote to you.

"We shall be happy to agree on a case immediately to be submitted to the courts, if you care to follow the line we intended some time ago.

"Or you might formally seize an engine and we will replevy. Of course, if you propose to seize the engine, you will give us notice a few days ahead, so we can be ready with our bond to replevy the engine.'

"15. The engine, for the recovery of which this action has been brought, was duly seized and levied upon under a warrant of distress issued against the plaintiff and directed to the defendant, a collector, commanding him to levy upon the goods of the plaintiff a certain sum, and the said engine, at the time of such levy, was the property of the plaintiff. The said warrant was issued in respect of rates and taxes upon 'the property' for the year 1902, the liability for the payment of which is denied by the plaintiff.

"The question for the opinion of the court is whether 'the property' is exempted from taxation imposed under said assessment hereinbefore set out.

"If the court shall be of opinion in the affirmative, then judgment shall be entered for the plaintiff against the defendant for a declaration that the plaintiff is entitled to possession of the said engine, and for plaintiff's costs of the action, including the costs of this special case to be taxed.

"If the court shall be of the opinion in the negative, then judgment shall be entered for the defendant against the plaintiff directing a return of the said engine to the defendant, the same having been seized

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

by the sheriff of the County of Cape Breton under an order of replevin issued herein for the sum of $4,926.40 and for the defendant's costs of this action, including the costs of this special case, to be taxed.

" Dated at Sydney, this 2nd day of Nov., 1902.

W. H. COVERT,
Solicitor for plaintiff company.

W. CROWE,
Solicitor for defendant."

The Supreme Court of Nova Scotia held that the question of law submitted should be answered in the negative and that the property of the plaintiffs mentioned in the first paragraph of the special case was not exempted from taxation under the assessment set out therein. The plaintiffs appealed to this court.

Lovett for the appellants. The history of the Assessment Act may be inquired into. *United States* v. *Union Pacific Railroad Co.* (1); *Church of the Holy Trinity* v. *United States* (2).

The assessment roll may be looked at to see if the Act as printed agrees with it. *Taff Vale Railway Co.* v. *Davis & Sons* (3); *Carter* v. *Molson* (4).

The history of the Act shows that it was never intended to tax railways, and the construction put upon it by the court below would render the clause meaningless. *Curtis* v. *Stovin* (5)

Assuming that the railway could be taxed, the tax was not imposed until the assessment roll was made up; *Nicholls* v. *Cumming* (6); *City of London* v. *Watt & Sons* (7); and when that was done the Act of 1902 was in force and the railway was exempt.

(1) 91 U. S. R. 72 at p. 79.
(2) 143 U. S. R. 457 at pp. 463-5.
(3) [1894] 1 Q. B. 43 at p. 51.
(4) 8 App. Cas. 530.
(5) 22 Q. B. D. 513.
(6) 1 Can. S. C. R. 395 at p. 411.
(7) 22 Can. S. C. R. 300.

1904

DOMINION IRON AND STEEL CO. v. MCDONALD.

Borden K.C. for the respondent. The printed roll is made the original by R. S. N. S. (1900) ch. 44 sec. 5.

A mistake cannot be imputed to the legislature. *Richards* v. *McBride* (1); *Commissioners of Income Tax* v. *Pemsel* (2).

Exempting Acts are to be strictly construed as involving taxation on the rest of the community. Maxwell on Statutes (3 ed.) p. 303. *The People* v. *Commissioners of Taxes* (3); *Henderson* v. *Township of Stisted* (4).

THE CHIEF JUSTICE.—I am of opinion that this appeal should be allowed with costs and that judgment should be entered for appellants upon their action upon the ground that sec. 4 (p) of ch. 73 R. S. N. S. read in the light of the history of the legislation on the subject, exempts the engine in question from taxation.

SEDGEWICK, DAVIES and KILLAM JJ. concurred in the opinion of Mr. Justice Nesbitt.

NESBITT J.—I do not think it necessary to deal with any of the interesting questions raised by the appellant other than the short point that, assuming the legislation in question valid and the property liable to taxation from 1st February, 1901, to 27th March, 1902, the tax rate never was authorized until 6th May, after the Act had been passed exempting the property from taxation, and therefore no valid tax was imposed. There is no doubt that the Act passed on the 27th March, 1902, speaks only as to the future.

The judgment in the court below, after setting out

(1) 8 Q. B. D. 119.
(2) [1891] A. C. 531 at p. 549.
(3) 26 N. Y. 163.
(4) 17 O. R. 673.

sections 61-62 of the Assessment Act, failed to notice that by section 128 of the Municipal Act, being chapter 70 of the Revised Statutes of Nova Scotia, 1900, it is provided as follows:

(1) The assessment roll for the municipality certified by the clerk shall be laid before the council at the first annual meeting after its completion.

(2) The council shall make estimates of all sums which are required for the lawful purposes of the municipality for the then current year, making due allowance in such estimates for the abatement, losses and expenses which may occur in the collection of the taxes and for taxes which may not be collected or collectable; *and the council shall authorize the levying and collection of a rate or rates of so much on the dollar on the assessed value of the property and income assessed in the roll as the council deems sufficient* to raise the sum required to defray the expenses of the municipality for the then current year, including any deficiency from any preceding year. 1895, c. 3, s. 63, part.

And we think that, until this section was complied with, the liability was not fixed. The saving clause, section 10 of the Interpretation Act, cannot, therefore, be appealed to, and I think that the appeal must be allowed with costs.

Appeal allowed with costs.

Solicitor for the appellants: *W. H. Covert.*

Solicitor for the respondent: *W. Crowe.*