1925
*May 29.
*June 18.

THE CITY OF OTTAWA.....APPELLANT;

AND

THE CANADIAN NATIONAL RAILWAYS.....RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Assessment and taxes—Agreement for fixed valuation—Term of years—Computation—Mode of assessment.

In 1907 an agreement was entered into by the city of Ottawa with the Can. Atl. Ry. Co. which was undertaking to build a hotel in the city to cost not less than $1,000,000. The agreement provided "that for and during the period of fifteen years next ensuing from and including the year 1909 the total assessed value of the said hotel and the land used in connection therewith and all buildings * * * and appurtenances * * * is hereby fixed and agreed upon at the sum of five hundred thousand dollars and no more." During this period the rates on such valuation were to be the same as those imposed on property owners generally. In 1907 and since the system of the city was—and is—to prepare, not later than September 30 of each year, an assessment roll to form the basis of taxation for the following year if the council of that year so decides.

Held, affirming the judgment of the Appellate Division (56 Ont. L.R. 153) that the agreement for the fixed assessment value must be construed in connection with the system according to which the first assessment on the hotel property would be levied in 1910; the fifteen year period, therefore, included the year 1924.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1) reversing the judgment of the Ontario Railway and Municipal Board in favour of the appellant.

The only question for decision on this appeal is whether or not the fifteen-year period for a fixed assessment of the Chateau Laurier, under the agreement the material portions of which are set out in the above head-note, expired in 1923 or extended to 1924. The Court of Revision, County Judge and Municipal and Railway Board held that it ended in 1923 but were overruled by the Appellate Division.

Proctor for the appellant.

Tilley K.C. for the respondent.

The judgment of the Court was delivered by

DUFF J.—By a statute of the Ontario Legislature of 1907, ch. 79 of the statutes of that year, the Corporation of the City of Ottawa was authorized to conclude an agreement with the Canada Atlantic Railway Company, the respond-

PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

(1) 56 Ont. L.R. 153.

ents' predecessors in title, to fix, for a period of years, on specified conditions, the municipal assessment for taxation purposes of a central passenger station to be constructed by the railway company, and also to fix at the sum of $500,000, for a period of fifteen years, the municipal assessment for such purposes of an hotel, also to be constructed by the railway company.

Pursuant to this authority, the municipality and the railway company executed an agreement on the 16th day of November, 1907, by which the railway company undertook (*inter alia*) to construct an hotel, to cost not less than one million dollars, and a fixed assessment was agreed to, for a period defined by the agreement.

The question in controversy between the parties to this appeal arises from the construction of clause 3 of the agreement of 1907, which reads as follows:—

3. And for the considerations aforesaid the city, in pursuance also of the powers and authority conferred on it by the said statute of the province of Ontario, chapter 79 of 7 Edward VII, agrees with the Canada Atlantic that for and during the period of fifteen years next ensuing from and including the year 1909, the total assessed value of the said hotel and the land used in connection therewith and all buildings, superstructures, substructures, fixtures and appurtenances whatsoever thereunto belonging shall be and the said assessment and valuation is hereby fixed and agreed upon at the sum of five hundred thousand dollars and no more, and it is hereby distinctly agreed and declared that the said above described property shall only be liable to be rated for all purposes of taxation by the city in each of the said fifteen years, on such fixed assessment valuation of five hundred thousand dollars and no more and that such rates to be imposed on said fixed assessment of five hundred thousand dollars shall be the usual and the same as the rates imposed on all ratepayers and property owners of the said city of Ottawa generally, in each of said fifteen years as provided by the provisions of the Assessment Act and amendments thereto.

For some years before 1907 it had been the practice of the municipality, in preparing the annual assessment roll, to follow the procedure authorized by section 57 of the Assessment Act (c. 95, R.S.O., 1914), and this procedure has been followed ever since. According to this plan, the assessment roll is prepared and completed in each year not later than the thirtieth of September, submitted to the Court of Revision before the end of the year, and forms, if the council of the ensuing year so decides, the basis of taxation for the latter year.

The municipality contends that the fifteen-year period defined by clause 3 came to an end with the year 1923, and that there is nothing in the clause to disable the municipal-

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ity from assessing the property in the assessment roll prepared in that year, which was to form the basis of taxation for the year 1924, at its full value in the normal way, without reference to the terms of the agreement. On behalf of the railway company, on the other hand, it is argued that the agreement is expressed in contemplation of the procedure already mentioned in relation to assessment, which was in force in the municipality, and that the declaration in clause 3, fixing the amount of the assessment during the specified period, governs the municipality in respect of any assessment made in any one of the years during that period, in conformity with that procedure, which was known to all parties, and which all parties assumed, and rightly assumed, would not be discontinued.

It would appear that the agreement must be interpreted in light of this procedure. It is impossible to deny that the roll prepared under sec. 57 of the Assessment Act in one year as the basis of taxation for the next year (at the discretion, it is true, of the next year's council), is properly described as an "Assessment Roll," or that the entries in it respecting assessable properties and their values are properly described as "assessments." The statute so describes the roll, and the statute provides for appeals in the ordinary way to the Court of Revision and the County Judge, in respect of the "assessments" comprised in it. When, therefore, the statute speaks of a "fixed assessment" of $500,000 "upon a hotel," and the agreement speaks of "the total assessed value of the said hotel and the land," and of the "said assessment and valuation," and of "the fixed assessment valuation," and of the "said fixed assessment," all these phrases are properly capable of application to the valuation or the assessment appearing in any annual roll made in conformity with the settled practice. There appears to be little force in the suggestion that either the statute or the agreement contemplates an assessment by operation of law in disregard of the ordinary procedure. Everybody must have assumed that the sum of $500,000 would be entered in the usual way in the annual roll as the assessed value of the company's property, for the reason alone, if for no other, that this would be the convenient and normal way of ensuring that this sum would be taken into account as one of the elements making up the total

value of taxable property in respect of which the rate would be struck. The language being fairly susceptible of this construction, it seems reasonable to read it in light of the existing course of procedure, and, in ascertaining its true construction, it is quite impossible to ignore the subsequent practice under the agreement. Under that practice, in the year 1909, the assessed value of the hotel property was entered as $500,000 in the roll prepared as the basis of taxation for the year 1910. Notice of this assessment, it must be assumed, was in due course sent to the company, and it was on this footing that the parties carried out the agreement thereafter. The majority of the Appellate Division seems to have rightly concluded that, in view of these considerations, the first part of paragraph 3 must be read as containing a declaration that, for the purpose of any assessment made during the specified fifteen years, including any assessment made in accordance with the existing procedure in any one of those years as the basis of taxation for the ensuing year, the value of the property was ascertained and fixed at the sum of $500,000, and that the effect of that part of the clause, if not qualified by the subsequent words, would be to preclude the municipality from entering as that value in the assessment roll prepared in 1923 any higher or other sum than $500,000.

This view is attacked upon two grounds: first, it is said that assessments of this character are not really assessments within the meaning of the clause, because they go into effect only at the discretion of the council of the following year. That objection has been sufficiently answered already. The next objection is that in effect, by this construction, the company receives the benefit of an exemption for sixteen, instead of fifteen, years. To this there are two answers: first, the parties must have realized that there was no certainty that for the earlier years, particularly for the year 1910, the fixed assessment would operate for the advantage of the company. In point of fact, it seems probable that it operated to their disadvantage in both the years 1910 and 1911. Secondly, if the parties had acted on the construction now advanced on behalf of the municipality, and taxed the company on the basis of an assessed value of $500,000 for the year 1909, the result would have been in fact an obviously ludicrous one. The hotel was

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not completed till 1912. The order in council authorizing the transfer of the land was passed only in October, 1909.

We cannot assume that the actual course of events was quite outside the expectation of the parties, and if it was at all in accordance with those expectations, it is impossible to suppose that the parties would have provided for taxes on the basis of a valuation of $500,000 in the year 1909. In this view it will be apparent that the construction advanced by the municipality, if adopted, postulates an intention to grant only an exemption for fourteen years, instead of fifteen years. The view above indicated as to the reading of the first part of paragraph three not only gives effect to the words employed by the parties, but gives effect also to their intentions as deduced from all the facts which may legitimately be taken into account for the purpose of construing those words.

But the first part of clause 3 cannot, of course, be read alone; and it is argued that, read with the remainder of the clause, the effect is materially qualified. The words to be considered are these:—

and it is hereby distinctly agreed and declared that the said above described property shall only be liable to be rated for all purposes of taxation by the city in each of the said fifteen years, on such fixed assessment valuation of five hundred thousand dollars and no more and that such rates to be imposed on said fixed assessment of five hundred thousand dollars shall be the usual and the same as the rates imposed on all ratepayers and property owners of the said city of Ottawa generally, in each of said fifteen years as provided by the provisions of the Assessment Act and amendments thereto.

The effect of this language may, I think, be fairly stated thus: The municipality is disabled from rating the property mentioned for any purpose of taxation in any one of the specified fifteen years upon a valuation of more than $500,000. It does not limit the effect of the earlier part of the paragraph: it is introduced not for the protection of the municipality, but for the protection of the ratepayer. If, by some carelessness or misapprehension, it is more limited in its scope than it should have been, that is not a ground for declining to give effect to the plain meaning of the words which precede it.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Frank B. Proctor.*
Solicitor for the respondent: *George F. Macdonnell.*