LOBLAW GROCETERIAS CO. LIMITED ..... } APPELLANT;

AND

THE CORPORATION OF THE CITY OF TORONTO ..... } RESPONDENT.

1936

* May 6
* May 27.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Assessment and taxation—Business assessment—Clause (cc) (added in 1933, c. 2, s. 2) of s. 9 (1) of Assessment Act, R.S.O. 1927, c. 238—"Distribution premises" for goods supplied to a chain of retail stores—Submission of questions under s. 84 of said Act.

Clause (*cc*) (added in 1933, c. 2, s. 2) of s. 9 (1) of the *Assessment Act*, R.S.O. 1927, c. 238, imposes upon "every person carrying on the business of selling or distributing goods * * * to a chain of more than five retail stores or shops in Ontario" a business assessment for a sum equal to 75 per cent. of the assessed value of the land occupied or used "in such business for a distribution premises, storage or warehouse" for such goods, or for an office used in connection with the business. Appellant company owned a chain of retail grocery stores and had in Toronto, Ontario, a large warehouse building in which it had its general administrative offices, and in which it stored goods until required by its stores, and from which it distributed goods by trucks to its stores. In respect of this building (and the land on which it stood) appellant was assessed under said clause (*cc*); this assessment was not in dispute. In 1934 appellant acquired land and built thereon, across a street from the said older building (and not

* PRESENT:—Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

1936

LOBLAW GROCETERIAS CO. LTD. v. CITY OF TORONTO.

connected with it except by a small pipe tunnel under the street for housing pipes and wires for conveying steam heat, water, electricity and gas to the new building), a building used, (1) for a garage for housing appellant's trucks, (2) as a repair shop for its trucks, and for servicing its cars used by its store supervisors in making inspections, and (3) as a carpenter, paint and repair shop for repairing shelving and other fixtures in the retail stores and doing repairs to said stores. In respect of this building also (and the land on which it stood), and as a parcel in itself, appellant was assessed by the City of Toronto under said clause (*cc*); and the question in dispute, on a case stated by a County Court Judge under s. 84 of said *Assessment Act,* was whether appellant was (in respect of the latter building and land) properly so assessed.

Held: Appellant was not assessable under said clause (*cc*) in respect of the building and land secondly above described. It could not be said that the land was occupied or used by appellant in its business for distributive purposes in the sense that the two buildings taken together were occupied and used in its business for the storage and distribution of its goods. The occupation or use of the particular land assessed must be looked at; and the new building could not be said to come plainly within the words "distribution premises" within clause (*cc*), strictly read.

The contention that the finding in the courts below that the land and building in question were used as distribution premises was a finding of fact which should not be interfered with, was rejected. The question raised was the proper construction of the statute (*Sedgwick* v. *Watney,* [1931] A.C. 446).

The only questions that may be submitted by a County Court Judge under said s. 84 are questions directly affecting the particular assessment in appeal before him. It was not proper in the present case to submit further a general question whether the premises were assessable for business tax under any of the provisions of the Act.

APPEAL by Loblaw Groceterias Co. Ltd. from the judgment of the Court of Appeal for Ontario dismissing (Henderson J.A. dissenting) its appeal from the judgment of His Honour, Judge Lee, of the County Court of the County of York, confirming a certain assessment by the City of Toronto (respondent) of the appellant company for business assessment. The appeal to the Court of Appeal was by way of stated case pursuant to s. 84 of the *Assessment Act,* R.S.O. 1927, c. 238, and amendments. The material facts of the case are sufficiently stated in the judgment now reported, and are indicated in the above head-note. The appeal to this Court was allowed, with costs throughout.

G. A. Urquhart K.C. for the appellant.

J. P. Kent and *W. G. Angus,* for the respondent.

1936

LOBLAW GROCETERIAS CO. LTD. v. CITY OF TORONTO.

The judgment of the court was delivered by

DAVIS J.—The appellant, Loblaw Groceterias Co. Limited, carries on business in the province of Ontario as retail grocers and owns a chain of more than five retail stores or shops in the province of Ontario. The head office of the company is in the city of Toronto.

In 1928 the appellant constructed a large warehouse building in the city of Toronto on lands bounded on the south by Fleet street, on the west by Bathurst street, on the north by Housey street and on the east by a railway siding.

The following are the uses to which this building has been and is put:

(*a*) The housing of the general administrative offices of the company.

(*b*) The storage of surplus goods, wares and merchandise sold in the company's retail stores until such times as they are required by these stores.

(*c*) The manufacture of candies, cakes and sundry other articles and the cutting of meats, etc.

(*d*) The loading of trucks in runways on the ground floor of said building.

(*e*) The distribution of goods, wares and merchandise by the said trucks from this building to the various retail stores operated by the appellant according to the needs of the stores. No selling by retail is done at this building.

Nothing is charged directly to the stores for the service of distribution from this building to the stores, but the goods are sent out to the various stores from this building duly priced for sale in the said stores.

In the year 1934 the appellant acquired certain land bounded on the south by Housey street, on the west by Bathurst street and on the north and east by a travelled road, and constructed a large new building which is used solely for the following purposes:

(1) As a garage for housing appellant's trucks.

(2) As a repair shop for repairing appellant's trucks and for the service of appellant's cars used by the supervisors of the various retail stores in making their inspections. The appellant does not carry on a garage business.

1936

LOBLAW GROCETERIAS CO. LTD. v. CITY OF TORONTO.

Davis J.

(3) As a carpenter, paint and repair shop solely for the purpose of servicing the shelving and other fixtures in the retail stores and doing repairs to the said stores.

There is no connection between the two buildings except by a small pipe tunnel which passes under Housey street for housing pipes and wires for conveying steam heat, water, electricity and gas from the first mentioned to the last mentioned building.

The appellant does not carry on a trucking business, its trucks being used only to distribute the appellant's own goods, wares and merchandise to the retail stores of the appellant.

These are the facts stated by a Judge of the County Court of the County of York pursuant to the provisions of sec. 84 of the *Assessment Act,* R.S.O. 1927, ch. 238, and amendments thereto, on an appeal by the appellant to the Court of Appeal for Ontario from the judgment of the County Judge who confirmed an assessment by the respondent for "business assessment" on the secondly described land and building. The question in appeal turns upon the proper construction to be put upon an amendment in 1933 to the *Assessment Act,* the amendment being sec. 2 of chapter 2 of the Statutes of 1933, which amended subsection (1) of section 9 of the *Assessment Act* by adding thereto the following clause (*cc*):

(*cc*) Every person carrying on the business of selling or distributing goods, wares and merchandise to a chain of more than five retail stores or shops in Ontario, directly or indirectly, owned, controlled or operated by him, for a sum equal to seventy-five per centum of the assessed value of the land occupied or used by him in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with the said business.

Until the 1933 amendment, the appellant was liable for business assessment as a retail merchant under clause (*h*) of subsection (1) of section 9 for a sum equal to 25 per centum of the assessed value of the land occupied or used by it for the purpose of its business. The amendment of 1933, (*cc*), increased the rate of assessment from 25 to 75 per centum on every person, such as the appellant, carrying on the business of selling or distributing goods, wares and merchandise to a chain of more than five retail stores or shops in Ontario, directly or indirectly, owned, controlled or operated by such person, but the assessment at the increased rate applies only to "the assessed value of the

land occupied or used by him in such business for a distribution premises, storage or warehouse for such goods, wares and merchandise, or for an office used in connection with the said business."

Since the amendment of 1933 the firstly described building and the land on which it stands have been assessed for business tax for a sum equal to 75 per centum of their assessed value, and this assessment is not in dispute. The secondly described building and the land on which it stands were similarly assessed for business tax for 1936. From the latter assessment, the appellant appealed to the Court of Revision which dismissed the appeal. From that decision an appeal was taken by the appellant to the County Judge, and he dismissed that appeal. The appellant having requested the County Judge on the hearing of the said appeal to make a note of the questions of law to be considered and to state them in the form of a special case for a Divisional Court pursuant to the provisions of sec. 84 of the *Assessment Act,* the facts above set forth were so stated for the consideration of a higher court. The learned County Judge on the facts was of opinion that the secondly described building and the land on which it stands came within the 1933 amendment. Upon further appeal by the appellant, on the stated case, the Court of Appeal for Ontario (Latchford, C.J.A., and Riddell, J.A.; Henderson, J.A., dissenting) dismissed the appeal. From this judgment the appellant appealed to this Court.

The sole question therefore is, whether or not the land and building used by the appellant for a garage and paint shop come within the words "distribution premises" in the amending statute. It is not suggested, of course, that the land or building was used for "storage" or "warehouse" for the appellant's "goods, wares and merchandise" or for "an office" in connection with its business, but it is contended by counsel for the respondent that the land is occupied or used by the appellant in its business for distributive purposes in the sense that the two adjacent buildings taken together are in fact occupied and used by the appellant in its business for the storage and distribution of its goods, wares and merchandise. The two parcels of land are separately assessed and the particular assessment with which we are concerned must itself be justified

1936

LOBLAW GROCETERIAS CO. LTD. v. CITY OF TORONTO.

Davis J.

by the statute. It is plain that the words of the statute "point at some kind of special use of the premises," to use the words of Viscount Dunedin in the House of Lords in *Sedgwick* v. *Watney* (1), and that the occupation or use of the particular land subjected to this special assessment must be looked at. Without attempting any definition as to what are and what are not "distribution premises" within the statute, I do not think that the garage and paint shop in the separate though adjacent building to the warehouse or storage building of the owner can be said to come plainly within the language strictly read. The use of precise words such as "storage," "warehouse" and "office" in the section entitles the appellant to the narrower construction.

It is argued that, the courts below having reached the conclusion that the land and building were used as distribution premises, this is a finding of fact with which we ought not to interfere. But it is a question of law that is made the subject-matter of the right of appeal from the County Judge upon a stated case and we are bound to determine upon the proper construction of the amendment whether or not, upon the facts stated, the land and building are caught by the increased rate of assessment. Questions of this sort are constantly before the House of Lords on taxing statutes and are dealt with as raising the proper construction to be put upon the language of the statutes. For instance, in *Sedgwick* v. *Watney* (2) above mentioned the question was whether a bottling store occupied by brewers in which beer brewed by them elsewhere was matured, carbonated, filtered and bottled, and from which, after the bottles had been corked and labelled, it was distributed to the trade, was "an industrial hereditament" under sec. 3 of *The Rating and Valuation Apportionment Act, 1928,* or was primarily occupied and used for the purposes of "distributive wholesale business" within an exception in the Act. The rating authority had put the premises on the special list as an industrial hereditament and their decision was upheld by the Assessment Committee. Appeal being taken to Quarter Sessions, a special case was stated to the King's Bench Division which reversed the court below. From that judgment, appeal was taken

(1) [1931] A.C. 446, at 463. (2) [1931] A.C. 446.

to the Court of Appeal which reversed the judgment of the King's Bench Division and restored the judgment of the Assessment Committee. The House of Lords then considered the matter and the judgment of the House was read by Viscount Dunedin, pp. 460-465, and while it said that "after all, the question is an individual one as to each particular hereditament," the appeal was determined upon the proper construction to be put upon the words of the statute.

The appeal should be allowed with costs throughout, and the first question submitted by the County Judge upon the stated case,

> Was I correct in holding that the appellant in respect of the land and building above mentioned situate on the northeast corner of Housey and Bathurst streets, Toronto, was properly assessable for business tax for a sum equal to seventy-five per centum of the assessed value thereof?

should be answered in the negative.

The County Judge submitted a further question:

> If the above question is answered in the negative, are the said premises assessable for business tax under any of the provisions of the Assessment Act?

This second question was not discussed before us and we assume that the parties did not think that it raised any difficulty once the first question was answered. But the question was not in any event a proper one, in that the particular assessment before the court was founded and supported solely upon the amending clause (*cc*), and the only questions permitted a County Judge to submit by way of a stated case under sec. 84 of the *Assessment Act* are questions directly affecting the particular assessment in appeal before him, and the provision of the statute cannot be used generally for obtaining the court's opinion as to whether an assessment under some other section of the statute could properly be made.

Appeal allowed with costs.

Solicitors for the appellant: *Urquhart & Urquhart.*

Solicitor for the respondent: *C. M. Colquhoun.*