TRANS MOUNTAIN OIL PIPE LINE COMPANY (*Plaintiff*) .. APPELLANT;

AND

JASPER SCHOOL DISTRICT NO. 3063 (*Defendant*) ..... RESPONDENT.

1958
*Feb. 4, 5
Apr. 22

ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPELLATE DIVISION

Taxation—School taxes—School district within national park—Oil pipe line passing through district—The Assessment Act, R.S.A. 1955, c. 17, ss. 5(1)(p), 6(6)—The School Taxation Act, R.S.A. 1942, c. 176, s. 28(2)—The Pipe Line Taxation Act, R.S.A. 1955, c. 235, s. 3(1).

The respondent school district was situated entirely within the limits of a national park. The appellant company owned a pipe line which passed through a part of the district, and was assessed by the latter for school taxes. The company sought a declaration that it was not subject to assessment and taxation.

Held: The pipe line was properly assessed. Under s. 6(6) of *The Assessment Act,* the school district was "deemed to be a town" for purposes of the Act, and this made applicable to it the general machinery of assessment, taxation and collection, and also the subject-matter of taxation, available to towns incorporated under *The Town and Village Act.* The exemption of pipe lines by s. 3(1) of *The Pipe Line Taxation Act* extended only to pipe lines "situated outside of any city, town or village", and the pipe line here in question was within an area which, for assessment purposes, was considered to be a town; the word "town" in *The Pipe Line Taxation Act* was not limited to a town formally incorporated under *The Town and Village Act.* The pipe line was within the language of *The Assessment Act,* and the imposition of the taxation did not conflict with the tax rental agreement of September 22, 1952, between the Provincial and Dominion Governments.

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division[1], affirming a judgment of Johnson J.A.[2] Appeal dismissed.

L. D. Hyndman, Q.C., for the plaintiff, appellant.

G. A. C. Steer, for the defendant, respondent.

The judgment of the Court was delivered by

RAND J.:—The question raised in this appeal is that of the taxability for school purposes of the pipe line of the Trans Mountain Oil Pipe Line Company, the appellant, which is carried through a portion of the respondent school district.

*PRESENT: Kerwin C.J. and Rand, Locke, Fauteux and Abbott JJ.

[1] (1957), 20 W.W.R. 678.

[2] (1956), 19 W.W.R. 273.

1958

TRANS MOUNTAIN OIL PIPE LINE CO. v. JASPER SCHOOL DISTRICT

Rand J.

The general scheme of the legislation dealing with taxation can be shortly stated. *The Assessment Act,* R.S.A. 1942, c. 147 (now R.S.A. 1955, c. 17), provides the machinery and the subject-matter for the entire Province. Other statutes provide for the creation of municipal bodies, such as cities, towns, villages and municipal districts, for the administrative expenses of which the taxes are required; and these special Acts are to be read as if the provisions of *The Assessment Act* were incorporated in each of them.

The issue in this case arises out of subs. (6) of s. 6 of that Act:

> Notwithstanding any other provision of this Act, every school district which is situate within any National Park shall for the purposes of this Act be deemed to be a town and all the provisions of this Act relating to assessment in towns, the holding of courts of revision and appeals from assessments, shall *mutatis mutandis* apply to every such school district.

The respondent is such a school district. That does not mean that for any purpose other than of taxation it ceases to be a school district; in all other respects, such as the scope of its activities and the money which it expends, it remains a school district; but its expenditure is looked upon as if it were for the ordinary administrative expenses of a town, to be raised as if the district were a town incorporated under *The Town and Village Act,* 1952 (Alta.), c. 97 (now R.S.A. 1955, c. 338).

The essential question is whether the "purposes of this Act" include not only the machinery of assessment, of taxation and of collection, but also the subject-matter of the taxation. When the assessor for the respondent district prepares to make up the roll, he must consult *The Assessment Act* as would a town assessor for the property which he is to include as assessable. He finds that, generally, all property within the territorial limits of the school district is liable, subject, among other exemptions not pertinent here, to the exemption of s. 5(1)(*p*), "Property assessable under . . . *The Pipe Line Taxation Act*". When that Act, R.S.A. 1942, c. 52 (now R.S.A. 1955, c. 235) is referred to, it is seen that by s. 3(1) all pipe lines "situated outside of any city, town or village" are to be taxed exclusively by the Province. Since the assessor is to assess all taxable property within the boundaries of the district, which, for that purpose, is "deemed

to be", *i.e.*, as if it were, a town incorporated by law, he must include the property in question; it is within an area which, in law, for assessment purposes, is considered to be within such a town.

The argument against this, forcibly presented by Mr. Hyndman, was that the language of *The Pipe Line Taxation Act*, when it refers to "town", means a town formally incorporated under *The Town and Village Act* and not one that for certain purposes only is so deemed to be a town.

Both these statutes deal with taxation; and when s. 3(1) of *The Pipe Line Taxation Act* refers to lines "situated outside of any . . . town" it is concerned with a subject-matter of tax related to physical boundary, a feature to which all taxation of corporeal property is related. The effect of s. 6(6) of *The Assessment Act* is that the property within a district "deemed" to be a town is that within its boundaries as if it were a town. A like case would be that of a school district which contains a town within its boundaries. Section 28(2) of *The School Taxation Act*, R.S.A. 1942, c. 176 (now embodied in *The School Act*, R.S.A. 1955, c. 297) provides that:

> For the purpose of taxation for school purposes and for the purposes of this section any portion of a town [school] district which is not within the limits of a city or town shall be deemed to be within the limits thereof . . .

What this does is to assimilate the subject-matter of assessment and taxation for school purposes to that of taxation for town purposes. The language in s. 6(6) "shall be deemed to be a town" has an equal if not greater effect in doing that than the language of s. 28. The only answer, apart from that already mentioned, is that the deeming "to be a town" or deeming to be "within the limits" attaches only the machinery of assessment and taxation and not subject-matter; but the language "for the purposes of this Act", *i.e.*, *The Assessment Act*, cannot be limited to a part only of its purposes.

Two other grounds taken by Mr. Hyndman remain. He questioned whether the property of the appellant was within the language of *The Assessment Act*. By s. 7, all lands not specifically declared exempt, together with buildings and improvements, are to be assessed. By

1958

TRANS MOUNTAIN OIL PIPE LINE CO. v. JASPER SCHOOL DISTRICT

Rand J.

s. 2(*j*), unless the context otherwise requires, land means "lands, tenements and hereditaments and any estate or interest therein", including minerals and growing timber. By s. 2(*i*) "buildings and improvements" include "all structures and fixtures erected upon, in, over, under or affixed to the parcel of land assessed". Section 12, dealing with a special situation, has application here:

> (1) In case there are upon, in, over, under or affixed to any land, which is exempt from assessment and taxation, any buildings, structures or erections, whether affixed to the land or not, which are the property of some person other than the owner of the land, then the owner of any such buildings, structures or erections shall be liable to assessment and taxation in respect thereof as if the same were land, and all such buildings, structures and erections shall be assessed at their fair actual value separately from the land forming the site thereof.

These provisions are sufficiently wide to embrace the property in question. The easement granted the company by the Dominion Government, with the property of the company set in the land, a "structure" within the meaning of s. 2(*i*) and s. 12, is an interest in land which, though related to Dominion Crown lands, is now, beyond dispute, a subject-matter of provincial taxation.

The second point was that the impost, being a corporation tax, conflicted with the tax rental agreement between the Provincial and Dominion Governments of September 22, 1952, by which certain provincial taxing powers were agreed not to be exercised during a stated period. The tax is on an interest in real property and that is expressly excepted from the operation of the agreement by the language of item 4 of Appendix B containing the Acts or parts of Acts imposing taxes declared not to be corporation taxes, "*The Assessment Act,* R.S.A. 1942, c. 157, Tax on real and personal property (except section 14)". Section 14 deals with railways.

I would, therefore, dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Field, Hyndman, Field, Owen, Blakey and Bodner, Edmonton.

Solicitors for the defendant, respondent: Milner, Steer, Dyde, Martland and Layton, Edmonton.