CITY OF VANCOUVER *(Plaintiff)*.....APPELLANT;

1950

AND

*Apr. 25, 26
*Jun. 23

B.C. TELEPHONE COMPANY,
B.C. ELECTRIC RY. CO. LTD.,
B.C. ELECTRIC COMPANY LTD.
(Defendants) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Taxation—Tax liability—Statute increasing tax rate—Whether retroactif.

By s. 39*a* of c. 55 of the Vancouver Incorporation Act, 1921, enacted by s. 3, c. 78 of the statutes of 1931 and amended by s. 7, c. 68 of the statutes of 1936, it was provided that "from January 1, 1937, until the year 1939, inclusive, and thereafter until amended by Statute", the public utility companies would be taxed at the rate of 1½ per cent per annum on the gross rentals received by the Telephone Co. and on the amount annually received for gas, light and power and for fares, by the other defendant companies. Each company was to file a return of its revenues forming the basis of taxation on or before January 31 of each year. In 1947, by ss. 3 and 4 of c. 103, s. 39*a* was amended to provide for an increase in rate to 2½ per cent and to change the basis of taxation in the case of the B.C. Electric Ry. Co. from "the amount of fares annually received" to "the basic fare revenue as defined in an agreement between the City and the said Company dated December 30, 1946", this last mentioned provision "to have had effect on and from the first day of January, 1947". The 1947 Act, which became effective on April 3, 1947, was not otherwise made retroactive.

Appellant contended that the new rate became effective in respect of the taxation period of 1947, or alternatively as of the date the Act was assented to. The defendants claimed that it became effective commencing with the taxation year 1948. The Court of Appeal affirmed the dismissal of the action by the trial judge.

Held: (Affirming the judgment appealed from), that the new rate of 2½ per cent did not apply to taxation of the respondents for the year 1947, and was not retroactive to January 1, 1937.

Held: Respondents became liable for the tax before the new rate under the 1947 Act had become effective, and not at the time that the rating by-law for 1947 was passed on April 18, 1947.

Miller v. *Salomons* (1852) 7 Ex. 476; *Queen* v. *Judge of City of London* (1892) 1 Q.B. 273; *Mersey Dock* v. *Turner* [1893] A.C. 468 and *Bradlaugh* v. *Clarke* [1883] 8 A.C. 354 referred to.

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Rand and Locke JJ.

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Rand J.

APPEAL from the judgment of the Court of Appeal for British Columbia (1) affirming a judgment of Macfarlane J. dismissing an action to recover taxes.

H. E. Manning K.C. and *J. B. Roberts* for the appellant.

J. W. de B. Farris K.C. and *A. Bruce Robertson* for the respondents.

The judgment of the Chief Justice and of Rand J. was delivered by

RAND J.:—In this appeal, a question of taxation is raised. Prior to April 3, 1947, section 39A of the charter of Vancouver, as enacted by chapter 78 of the statutes of 1931, was in the following language:—

39A. (1) The poles, conduits, cables, and wires of any telephone, electric light, or electric power company; the mains of any gas company; the rails, poles and wires of any street-railway or tramway company; and the plant and machinery, being fixtures appurtenant thereto and used in any way in connection therewith by any such company when situate on any street or public place, shall be deemed to be rateable property and shall be liable to taxation as provided in subsection (2) hereof.

(2) The several companies aforesaid *shall be taxed annually* at the rate of one per cent per annum (*a*) in the case of every telephone company on the gross rentals . . .; (*b*) in the case of every gas company on the amount annually received . . .; (*c*) in the case of every street-railway company on the amount of fares . . . The foregoing rates of taxation shall be in force from the first day of January, 1932, until the year 1936, inclusive, and thereafter until amended by Statute. The taxation imposed shall be in lieu of all taxes otherwise imposed and payable to the city upon the aforesaid property after the said first day of January, 1932.

(3) Every company to which this section applies shall annually, without any notice or demand, make a return of its revenue which forms the basis of the taxation hereunder, and shall file a return with the City Assessor on or before the thirty-first day of January in each year.

(4) For the purposes of recording on the assessment roll the property represented in this section, the Assessor shall, in respect to each and every one of the several companies aforesaid, set out on the assessment roll an amount which as a capital sum would yield on the basis of the taxation of improvements for rateable property within the city for the previous year an amount equivalent to the taxes payable under this section based on the revenues of the said companies as herein prescribed at the rate of one per cent per annum.

By chapter 68, 1936, the rate under the section was increased from 1 per cent to 1½ per cent and the duration

(1) [1950] 1 D.L.R. 207.

dates changed to January 1, 1937 and the year 1939 respectively. By chapter 103, 1947, assented to on April 3, the following amendments were made:

3. (1) Subsection (2) of section 39A, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "in the case of every street-railway company on the amount of fares annually received upon its street-cars within the city" in the ninth and tenth lines, and substituting therefor the following: "in the case of the British Columbia Electric Railway Company, Limited, on the basic fare revenue as defined in an agreement between the city and the said company, dated the thirtieth day of December, 1946, in respect of its street-cars and trolley coaches operated under such agreement."

(2) Subsection (1) hereof shall not come into force and shall have no effect unless the agreement therein mentioned has been validated and confirmed by Statute of the Province, in which case it shall be deemed to have come into force and to have had effect on and from the first day of January, 1947.

4. (1) Subsection (2) of section 39A, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "one and one-half" in the second line, and substituting therefor the words "two and one-half."

(2) Subsection (4) of said section 39A is amended by striking out the words "one and one-half" in the eighth line, and substituting therefor the words "two and one-half".

The agreement mentioned in section 3(2) was confirmed by chapter 94, 1947, as of the same date, April 3.

As it was impracticable for the respondents to furnish audited returns by January 31 in any year, the revenue in each case for the second anterior year was taken to be that for the preceding year, so that for 1947 the figures used were those for 1945, returned some time in 1946. From January 1, 1947, then, that datum for the purposes of the tax was officially in the records of the City.

The assessment roll is to be completed by December 31 and, subject to amendment thereafter by the assessment courts, is declared to be the roll for the ensuing year. The final closure took place in the month of February, 1947.

Prior to that, and pursuant to ss. (4) of section 39A, a constructive valuation of the properties of the respondents, described in 39A (1), through the capitalization of the tax, being 1½ per cent of the revenue returned, at the rate for improvements in 1946, was entered on the roll, and this valuation at the latter rate would, of course,

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reproduce the tax. In February, then, both assessed value and rate were likewise officially in the records of the City.

In those circumstances, at what moment can it be said that the tax against the respondents was imposed? If, in any case, that took place after April the 3rd the new rate undoubtedly applied; it was then the only rate in force. But Mr. Manning argues that all taxes founded on the assessment roll become imposed at the same moment, and if the constructive value is strict assessment, that moment could not be prior to the passage of the by-law levying the general rate on April 18, at a time when the rate of 2½ per cent was effective. If, on the other hand, the tax, so founded, was imposed before April 3, or the entry is for other than assessment purposes and the tax is external to the roll, then the concluding language of 39(2) relates the tax at 2½ per cent back to the beginning of 1937.

By section 57, in each year the by-law levies the general rate to provide tax revenue for the year's financial requirements. Section 59 directs the collector to make out a tax roll in which is to be set down "with respect to each parcel of land upon which *taxes have been imposed,* the following information . . ." Then follow particulars of land, ownership, assessed value, etc.; and ss. (2) provides that "the said roll shall be prima facie evidence of the correctness of its contents, and shall be received in evidence in any court of law."

The word "levying", the equivalent of "imposing", signifies the execution of legislative power which charges on person or property the obligation of or liability for a tax. As early as 1864, in *Laughtenborough* v. *McLean* (1), it was stated that "the collector's roll is made, not for the purpose of creating a charge, but for the purpose of collecting a charge already made by the assessment roll." *Devanney* v. *Dorr* (2), after a reference to the binding effect of the assessment roll, continues, "and the person assessed becomes chargeable for any sums *ordered to be levied.*" This conception of the provisions of the Ontario Assessment Acts, in general the prototypes of enactments

(1) 14 U.C.C.P. 175. (2) (1883) 4 O.R. 206.

in the Western provinces, was followed in *Rural Municipality of Armstrong* v. *Gibson* (1); and in its reference to taxes which "have been imposed" the language of section 59 seems to me to conclude the question.

The result, then, is that upon the concurrence of the closed assessment roll and the by-law levying the rate, the imposition of the tax is effected, and the extension of the details on the tax roll is a ministerial or executive act.

The taxes here are in a special category. The assessment can be said to be represented by the capitalization, and the rate is that of the previous year. But it is said you cannot have impositions of tax, related to an assessment roll, arising at different times. I cannot see why not. The roll furnishes one factor and there is nothing in the statute that suspends the execution when both are operative; and by section 61 all taxes are referred back to January 1 as the date from which they are to be deemed due. If, then, the tax is one which the assessment roll embraces, it was imposed before April 3. The same result follows if the taxes are external to the roll: the tax became imposed upon the concurrence of the return of revenue and the statutory rate, which would be not later than January 31.

In either of the cases mentioned, what is the effect of the amendment on the years, including 1947, back to 1937? The contention is that it levies additional taxes on the respondents regardless of financial requirements of the City or of any other consideration.

The language "the *foregoing* rates of taxation shall be in force from the first day of January, 1937, until the year 1939, inclusive" in ss. (2) were enacted in 1936; by the same enactment the rate was increased from 1 per cent to 1½ per cent; and it was that particular rate which was to continue from 1937 to and after 1939 "until amended by Statute." The change of rate in 1947 is such an amendment, and it brings to an end the duration of the provision of 1936: upon its enactment, the clause was fulfilled. It is altogether misleading to read the particulars of amendment as inserted in the section but without reference to the original and the amending enactments. Although a statute is to be read as always speaking, that rule cannot

(1) [1923] 3 D.L.R. 1008.

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continue in force a provision which by its terms has ceased to be operative on a certain event; to speak it must be revived, which, in this case, it was not.

In *The King* v. *Spirit River Lumber Co.* (1), what was in question was the applicability of a general provision for the recovery of any tax imposed under the Act to a tax provided subsequently by an amendment. The provision by its nature was to continue and to attach to whatever tax liability from time to time arose under the statute. Here the clause is limited in its application to a specific rate under legislation enacted in a certain year; and when that rate is repealed the clause is exhausted of effect.

That we may look at the history of legislation to ascertain its present meaning is undoubted: *Attorney-General* v. *Lamplough* (2), and in the language of Brett, L.J. at p. 231:—

> We cannot tell what is the effect of the latter without looking at the meaning of the statute which it has repealed. We must treat it as we treat all statutes for the purpose of construing them; we must look at the facts which were existing at the time the Act passed, to see what was its meaning.

I would, therefore, dismiss the appeal with costs.

The judgment of Kerwin and Taschereau JJ. was delivered by

KERWIN J.:—This is an appeal by the City of Vancouver from the unanimous judgment of the Court of Appeal for British Columbia (3), affirming the judgment at the trial of three actions (now consolidated) brought against British Columbia Telephone Company, British Columbia Electric Railway Company, Limited, and British Columbia Electric Company, Limited, by the City for the recovery of taxes alleged to have fallen due in 1947 at the rate of two and one-half percentum on certain receipts of the Companies. The determination of the right of the City to succeed depends upon the relevant provisions of an Act known as the *Vancouver Incorporation Act,* 1921, chapter 55 of the British Columbia Statutes of 1921, and amending Acts, and particularly an amendment of 1947.

(1) [1925] 4 D.L.R. 794.
(2) (1878) 3 Ex. D. 214.
(3) [1950] 1 D.L.R. 207.

The first amendment to the Act to be noted was enacted in 1931 by chapter 78 whereby, for the first time, section 39A was inserted in the following terms:

39A. The poles, conduits, cables and wires of any telephone, electric light, or electric power company; the mains of any gas company; the rails, poles, and wires of any street-railway or tramway company; and the plant and machinery, being fixtures appurtenant thereto and used in any way in connection therewith by any such company when situate on any street or public place, shall be deemed to be rateable property and shall be liable to taxation as provided in subsection (2) hereof.

(2) The several companies aforesaid shall be taxed annually at the rate of one per cent per annum (*a*) in the case of every telephone company on the gross rentals actually annually received from its subscribers for telephones situate within the city, including inter-exchange tolls for calls between exchanges within the city;

(*b*) in the case of every gas company, electric lighting company, and electric power company on the amount annually received by such company for gas, electric light, or electric power consumed within the city; (*c*) in the case of every street-railway company on the amount of fares annually received upon its street-cars within the city. The foregoing rates of taxation shall be in force from the first day of January, 1932, until the year 1936, inclusive, and thereafter until amended by Statute. The taxation imposed shall be in lieu of all taxes otherwise imposed and payable to the city upon the aforesaid property after the said first day of January, 1932.

(3) Every company to which this section applies shall annually, without any notice or demand, make a return of its revenue which forms the basis of the taxation hereunder, and shall file a return with the City Assessor on or before the thirty-first day of January in each year.

(4) For the purposes of recording on the assessment roll the property represented in this section, the Assessor shall, in respect to each and every one of the several companies aforesaid, set out on the assessment roll an amount which as a capital sum would yield on the basis of the taxation of improvements for rateable property within the city for the previous year an amount equivalent to the taxes payable under this section based on the revenues of the said companies as herein prescribed at the rate of one per cent per annum.

In 1936, by chapter 68, section 7, it was provided as follows:

7. (1). Subsection (2) of section 39A of said chapter 55, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931" is amended by striking out the word "one" in the second line thereof, and substituting therefor the words "one and one-half"; and by striking out the words and figures "1932 until the year 1936" in the twelfth line thereof, and substituting therefor the words and figures "1937 until the year 1939"; and by striking out the figures "1932" in the last line thereof, and substituting therefor the figures "1937".

(2) Subsection (4) of said section 39A is amended by striking out the word "one" in the eighth line thereof, and substituting therefor the words "one and one-half".

(3) Subsection (1) of this section shall come into force and take effect on the first day of January, 1937.

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In 1947, sections 3 and 4 of chapter 103 of the British Columbia Statutes enacted:

3. (1). Subsection (2) of section 39A, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "in the case of every street-railway company on the amount of fares annually received upon its street-cars within the city" in the ninth and tenth lines, and substituting therefor the following: "in the case of the British Columbia Electric Railway Company, Limited, on the basic fare revenue as defined in an agreement between the city and the said Company, dated the thirtieth day of December, 1946, in respect of its street-cars and trolley-coaches operated under such agreement."

(2) Subsection (1) hereof shall not come into force and shall have no effect unless the agreement therein mentioned has been validated and confirmed by Statute of the Province, in which case it shall be deemed to have come into force and to have had effect on and from the first day of January, 1947.

4. (1) Subsection (2) of section 39A, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "one and one-half" in the second line, and substituting therefor the words "two and one-half."

(2) Subsection (4) of said section 39A is amended by striking out the words "one and one-half" in the eighth line, and substituting therefor the words "two and one-half."

The agreement referred to in subsection 1, above quoted, although dated December 30, 1946, provided by paragraph 59:

59. (*a*) The Company shall consent to a request by the Corporation to the Legislature of the Province of British Columbia for the amendment of section 39A of the Vancouver Incorporation Act so that commencing on the 1st day of January, 1947 the tax of 1½ per cent now imposed under subsection (2) of the said section on the fares annually received by the Company upon its street cars within the city shall be calculated upon the basic fare revenue as hereinafter defined in respect of its street cars and trolley coaches operated under this agreement.

(*b*) In the meantime and commencing on the first day of January, 1947, the parties shall govern themselves as though the said section 39A had been amended as aforesaid, and any moneys paid under this clause shall, until the said section shall have been so amended, be applied on account of the Company's obligation from time to time under the said section to the extent necessary to discharge such obligation.

While the reference in clause (a) to the tax of 1½ per cent might be said only to identify the tax under subsection 2 of section 39A of the Act, whatever might be the rate, it is of significance when taken in conjunction with the provisions of clause (*b*) by which, commencing January

1, 1947, the parties were to govern themselves in the meantime, before ratification of the agreement by the Legislature, as though section 39A had been amended. The agreement was ratified by an Act assented to on April 3, 1947, the same day that the 1947 amendment to the Act received the Royal Assent. It has not been overlooked that this agreement is with one only of the respondents.

Another significant fact is that while subsection 1 of section 3 of the 1947 amendment is to come into force on and from January 1, 1947, no date is fixed for the coming into force of the other provisions. In view of this, I take the intention of the Legislature to be that all the Companies are subject to taxation for the year 1947 at the old rate of one and one-half percentum per annum and not at the new rate.

While it was arranged between the City and the Companies that "for the purposes of recording on the assessment roll the property represented" in section 39A, the assessor should take the audited statements of receipts by the Companies, say for the year 1945, in making the entry on the assessment roll in 1946, that arrangement cannot, of course, alter the proper construction of the 1947 amendment. Nevertheless it is important to notice that the assessor is to begin to make the assessment not later than November 1 in each year for the year following and is to return to the City Clerk the assessment roll not later than December 31 in each year. The entry made by the assessor in the assessment roll, under the provisions of subsection 4 of section 39A of the Act, has no relevancy to the taxation to which the respondents are subject under that section. The entry made in 1946 in an assessment roll which is to be used in 1947 is of a capital sum that would yield "on the basis of the taxation of improvements for rateable property within the City for the previous year" an amount equivalent to the taxes payable under section 39A. The tax rate for such previous year might, or might not, be the tax rate for the year 1947. That being so, the assessment cannot be the basis for the taxation of the Companies under section 39A. The respondents are in a

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special position so far as taxation under that section is concerned and the general incidence of assessment under the Act does not affect the point to be determined.

The appeal should be dismissed with costs.

LOCKE, J.:—By section 39 of the *Vancouver Incorporation Act*, c. 55, Statutes of British Columbia 1921, 2nd Session, all rateable property in the City, or any interest therein, is made liable to assessment at its actual cash value as it would be appraised in payment of a just debt from a solvent debtor, the value of the improvements, if any, being estimated separately from the value of the land. By an amendment made in 1931 (s. 3, c. 78) section 39A was added whereby special provision was made for the assessment of, inter alia, telephone, electric light and power and street railway companies by defining that portion of their assets which should be deemed to be rateable property and liable to taxation, and providing for a tax at the rate of 1 per cent of a defined proportion of their receipts. Section 39A thus introduced was amended by section 7 of chapter 68 of the statutes of 1936 and, as thus amended, read as follows:

39A. (1) The poles, conduits, cables, and wires of any telephone, electric light, or electric power company; the mains of any gas company; the rails, poles, and wires of any street-railway or tramway company; and the plant and machinery, being fixtures appurtenant thereto and used in any way in connection therewith by any such company when situate on any street or public place, shall be deemed to be rateable property and shall be liable to taxation as provided in subsection (2) hereof.

(2) The several companies aforesaid shall be taxed annually at the rate of one and one-half per cent per annum (*a*) in the case of every telephone company on the gross rentals actually annually received from its subscribers for telephones situate within the city, including inter-exchange tolls for calls between exchanges within the city, (*b*) in the case of every gas company, electric lighting company and electric power company on the amount annually received by such company for gas, electric light, or electric power consumed within the city, (*c*) in the case of every street railway company on the amount of fares annually received upon its street cars within the city. The foregoing rates of taxation shall be in force from the first day of January, 1937, until the year 1939, inclusive, and thereafter until amended by Statute. The taxation imposed shall be in lieu of all taxes otherwise imposed and payable to the city upon the aforesaid property after the said first day of January, 1937.

(3) Every company to which this section applies shall annually, without any notice or demand, make a return of its revenue which

forms the basis of the taxation hereunder, and shall file a return with the City Assessor on or before the thirty-first day of January in each year.

(4) For the purposes of recording on the Assessment Roll the property represented in this section, the Assessor shall, in respect to each and every one of the several companies aforesaid, set out on the Assessment Roll an amount which as a capital sum would yield on the basis of the taxation of improvements for rateable property within the city for the previous year an amount equivalent to the taxes payable under this section based on the revenues of the said companies as herein prescribed at the rate of one and one-half per cent per annum.

Subsection (1) of this section shall come into force and take effect on the first day of January, 1937.

By an agreement made between the appellant corporation and the respondent British Columbia Electric Railway Company Limited, dated December 30, 1946, the parties agreed, subject to confirmation by the legislature, upon terms for the extension of the franchise of the street railway company for the operation of street cars, trolley coaches and motor buses for a term of twenty years. By the agreement the City undertook to make a request to the Legislature at its next session for the enactment of legislation confirming it and authorizing the parties to carry it into effect as though it had been confirmed and come into force on January 1, 1947, the street railway company agreed to support the request and the parties undertook that in the meantime, commencing on the said last mentioned date, they would govern themselves as though the agreement had come into force on that day. Paragraph 59 of the agreement reads as follows:

59. (*a*) The Company shall consent to a request by the Corporation to the Legislature of the Province of British Columbia for the amendment of section 39A of the Vancouver Incorporation Act so that commencing on the 1st day of January, 1947 the tax of 1½ per cent now imposed under subsection (2) of the said section on the fares annually received by the Company upon its street cars within the city shall be calculated upon the basic fare revenue as hereinafter defined in respect of its street cars and trolley coaches operated under this agreement.

(*b*) In the meantime and commencing on the first day of January, 1947, the parties shall govern themselves as though the said section 39A had been amended as aforesaid, and any moneys paid under this clause shall, until the said section shall have been so amended, be applied on account of the Company's obligation from time to time under the said section to the extent necessary to discharge such obligation.

The expression "basic fare revenue" appearing in clause (*a*) of the section was by section 61 defined as including amongst other revenues "City fare revenue" and this in

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turn was defined as meaning "the total of all passenger fares collected by the company for travel on its street cars, trolley coaches and motor buses (including chartered vehicles) operated under this agreement wholly within the City" less certain specified deductions.

On April 3, 1947, an Act to amend the *"Vancouver Enabling Act"* (c. 94) was assented to which approved the terms and validated and confirmed as of the first day of January, 1947, the above mentioned agreement in the following terms:

2. Notwithstanding anything contained in the "Vancouver Incorporation Act, 1921," or any other Act, the agreement entered into on the thirtieth day of December, 1946, and made between the City of Vancouver of the one part and British Columbia Electric Railway Company Limited of the other part, for granting a transportation franchise in the City of Vancouver, is hereby validated and confirmed as of the first day of January, 1947, and the parties thereto are hereby empowered and authorized to carry the same into effect accordingly.

On the same date an Act to amend the *"Vancouver Incorporation Act,* 1921" (c. 103) was assented to. Sections 3 and 4 of this Act read:

3. (1) Subsection (2) of section 39A, as enacted by section 13 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "in the case of every street-railway company on the amount of fares annually received upon its street-cars within the city" in the ninth and tenth lines, and substituting therefor the following: "in the case of the British Columbia Electric Railway Company, Limited, on the basic fare revenue as defined in an agreement between the city and the said Company, dated the thirtieth day of December, 1946, in respect of its street-cars, and trolley-coaches operated under such agreement."

(2) Subsection (1) hereof shall not come into force and shall have no effect unless the agreement therein mentioned has been validated and confirmed by Statute of the Province, in which case it shall be deemed to have come into force and to have had effect on and from the first day of January, 1947.

4. (1) Subsection (2) of section 39A, as enacted by section 3 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1931," and amended by section 7 of the "Vancouver Incorporation Act, 1921, Amendment Act, 1936," is further amended by striking out the words "one and one-half" in the second line, and substituting therefor the words "two and one-half."

(2) Subsection (4) of said section 39A is amended by striking out the words "one and one-half" in the eighth line, and substituting therefor the words "two and one-half."

The question to be determined upon the present appeal is as to whether the rate of $2\frac{1}{2}$ per cent imposed by section 4 of the 1947 amendment applies to the taxation of the

respondent companies for the year 1947. Macfarlane, J. by whom the actions were tried considered that it did not and an appeal from his judgment was dismissed by the unanimous judgment of the Court of Appeal. For the appellant it is contended that the question is determined by the very terms of the section. As amended section 39A by subsection 1 provides that the described property of the respondents shall be liable to taxation as provided in subsection 2, which declares that they shall be taxed annually at the rate of 2½ per cent on the described revenues in lieu of all other taxes, and subsection 4 states that subsection 1 shall come into force and take effect on the first day of January, 1937. This language, it is said, is free from ambiguity and must be construed literally. If this be correct, not only would the respondents be found liable for the tax at the increased rate for the taxation year 1947 but, in the result, their liability would be declared in respect of the years 1937 to 1946 both inclusive. It is not sufficient, in my opinion, to say that this would be so manifestly unjust that the Legislature could not have intended such a result if, as contended for by the appellant, the language is so clear as to permit of no other reasonable meaning. It is not an answer to such a contention to say that the result thus reached would be absurd. As was pointed out by Cockburn, C.J. in *Miller* v. *Salomons* (1), where the meaning of a statute is plain and clear the courts have nothing to do with its policy or impolicy, its justice or injustice: it is for them to administer it as they find it and that to take a different course is to abandon the office of judge and to assume the province of legislation. The rule is stated by Lord Esher, M.R. in *The Queen* v. *Judge of City of London* (2), where he referred to what had been said by Sir George Jessel in *The Alina* (3) thus:

> Jessel, M.R., says that the words of s. 2 are quite clear, and that, if the words of an Act of Parliament are clear, you must take them in their ordinary and natural meaning, unless that meaning produces a manifest absurdity. Now, I say that no such rule of construction was ever laid down before. If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the legislature has committed an absurdity. In my opinion, the rule has always been this—if the words of an Act admit of two interpretations, then they are not clear; and if one

(1) (1852) 7 Ex. 476 at 560.
(2) [1892] 1 Q.B. 273 at 290.
(3) (1880) 5 Ex. D. 227.

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interpretation leads to an absurdity, and the other does not, the Court will conclude that the legislature did not intend to lead to an absurdity, and will adopt the other interpretation.

This language was expressly approved by Herschell, L.C. in *Mersey Dock* v. *Turner* (1). Construing section 39A in its present form the terms of the Vancouver Incorporation Amendment Act of 1947, which authorized its amendment, must be considered. That statute not only changed the rate of the tax by section 4 but also in the case of the respondent B.C. Electric Railway Company Limited altered subsection 2 by providing that, in lieu of imposing the tax on the amount of fares annually received upon its street cars within the City, it should be imposed on the basic fare revenue as defined in the agreement of December 30, 1946, in respect of its street cars and trolley coaches operated under such agreement, and further that this change should not come into force unless the agreement was validated and approved by a statute of the province "in which case it shall be deemed to have come into force and to have had effect on and from the first day of January, 1947." If the appellant's present contention were right the tax of 2½ per cent would be imposed upon the basic fare revenue from and after January 1, 1937, since if the amended rate became effective as of that date by reason of the concluding sentence in the amended section 39A, the tax must be computed upon the basic fare revenue if the section be construed literally. This would be in direct conflict with the terms of section 3 of the Vancouver Incorporation Amendment Act of 1947. As to the other respondents, it cannot, in my opinion, be fairly contended that whereas in the case of the street railway company the increased rate of taxation was not to affect its revenues prior to those received in the year 1947, they are to be taxed retroactively to January 1, 1937: the section may not be construed in one manner for the street railway company and in another for other companies affected.

Subsection 1 of section 3 of the amending Act of 1947 must be read as if it were incorporated in section 39A and accordingly, in my opinion, the increased tax is not retroactive to January 1, 1937. By subsection 2 of section 39A, as it read following the amendment of 1936, the rate of

(1) (1893) A.C. 468 at 477.

1½ per cent per annum was to continue in force from the 1st day of January, 1937, until the year 1937 inclusive "and thereafter until amended by statute." The provision that the tax imposed by subsection 1 should come into force and take effect on the 1st day of January, 1937, read together with the provisions of subsection 2, should be construed as meaning that the rate thus imposed should continue after the year 1939 until it was amended by statute and, having been amended by the 1947 Act, thereafter ceased to be of any effect. This interpretation appears to me to be clearly what was intended by the Legislature. To interpret the statute in this manner is, in my view, to adopt and apply the principle stated by Turner, L.J. in *Hawkins* v. *Gathercole* (1), which was referred to with approval by Lord Hatherley in *Garnett* v. *Bradley* (2), and by Lord Blackburn in *Bradlaugh* v. *Clarke* (3).

It is further contended for the appellant that in any event the revenues of the respondents subject to taxation for the year 1947 are liable to be taxed at the advanced rate since it is said the tax was imposed after April 3, 1947, when the amendment received royal assent. In support of this contention it is said that the rating by-law for the taxation year 1947 not having been passed until April 18 of that year the liability arose after the legislation came into force. As to this, it is my opinion that the liability of the respondents did not arise by virtue of the rating by-law or depend in any manner upon it. The liability is imposed by the statute and depends neither upon an assessment (since there was nothing to value) nor upon the ordinary municipal procedure for the imposition of taxation. I think the increased rate did not apply to the designated revenues of any of the respondents for the taxation year 1947. When by chapter 78 of the Statutes of 1931, assented to on April 1 of that year, section 39A was introduced into the charter the taxation was declared to be in force from the 1st day of January, 1932, and the return which the companies were required to file with the City Assessor on or before January 31 in the latter year

(1) (1855) 6 DeG. M. & G. 1 at 21.
(2) [1878] 3 A.C. 944 at 950-1.
(3) (1883) 8 A.C. 354 at 372.

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was of the revenues for the year 1931. While the moneys here in dispute are for taxes imposed by the statute for the taxation year 1947, they are levied upon the revenues for the year 1946. In the case of the street railway company, until the amendment of 1947 the tax was imposed upon the amount of fares annually received upon its street cars within the City. Since the section as amended in 1947 imposes the increased rate only upon the basic fare revenue, as defined in the agreement, in respect of its street cars and trolley coaches, and since the provision subjecting this revenue to the increased tax is by virtue of subsection 2 of section 3 of the Vancouver Incorporation Amendment Act, 1947, effective only as and from January 1, 1947, there was no statutory authority, other than the section as it stood prior to its amendment, under which the "amount of fares annually received upon its street cars within the City" in 1946 could be taxed. The tax on the basic fare revenue becomes effective only as of January 1, 1947, and the rate of $2\frac{1}{2}$ per cent could for the first time be imposed only for the taxation year 1948. The company, it must be presumed, then made the required return of its basic fare revenue for the year 1947 and was taxed upon it. As, in my opinion, the section must be construed in the same manner in so far as it affects each of the respondent companies, the increased rate should, in my opinion, be held as not applicable to the tax levied in 1947 upon their 1946 revenues.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Arthur E. Lord.*

Solicitors for B.C. Telephone Co.: *Farris, Stultz, Bull & Farris.*

Solicitor for B.C. Electric Ry. Co. and B.C. Electric Co.: *A. Bruce Robertson.*