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*May 18, 19.
*Oct. 3.

IN THE MATTER OF

"THE LOCAL IMPROVEMENT ACT" (Ch. 11, Statutes of The Province of Alberta, 7th Edw. VII.).

THE CALGARY AND EDMONTON LAND COMPANY (OWNERS) .... } APPELLANTS;

AND

THE ATTORNEY-GENERAL OF THE PROVINCE OF ALBERTA (APPLICANT) ..... } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Appeal—Special leave—"Supreme Court Act," R.S.C. (1906) *c.* 139, *s.* 37(*c*)—*Interests involved—Construction of statute—"Alberta Local Improvement Act," 7 Edw. VII. c.* 11, *and amendments—"B.N.A. Act,* 1867," *s.* 125—*53 Vict. c.* 4 (*D.*)—*Assessment and taxation—Constitutional law—Railway aid—Land subsidy—Crown lands—Interests of private owner—"Free grant"—"Owner"—"Real property."*

Special leave to appeal from the judgment of the Supreme Court of Alberta (2 Alta. L.R. 446) was granted, under the provisions of section 37(*c*) of the "Supreme Court Act," R.S.C. 1906, ch. 139, because of the magnitude of the interests involved.

Provincial legislatures may authorize the taxation of beneficial or equitable interests acquired in lands wherein the Crown, in the right of the Dominion of Canada, holds some interest and the legal estate. The legislature of a province may provide for the levy and collection of taxes so imposed by the transfer of the interests affected by such taxes.

The Dominion statute, 53 Vict. ch. 4, authorized the granting of aid for the construction of a railway by a subsidy in Crown lands,

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and, by section 2, it was declared that such grants should be "free grants" subject only to the payment, on the issue of patents therefor, of the costs of survey and incidental expenses, at the rate of ten cents per acre. The lands in question formed part of the land-subsidy, earned by the railway company and reserved and set apart for that purpose by order-in-council, which had been conveyed by deed poll to the appellants by the railway company prior to the issue of a Crown grant. While still unpatented, these lands had been rated for taxes and condemned for arrears of taxes under the statute of Alberta, 7 Edw. VII. ch. 11.

Held, that the interest of the appellants in the said lands was subject to taxation and liable to be dealt with under the provincial statute, although letters patent of grant thereof by the Crown had not issued.

Held, also, that allotment of these lands as "free grants," under the subsidy Act, related only to exemption from the usual charges made in respect of public lands by or on behalf of the Crown, except the cost of survey, etc., and did not exempt the appellants' interest therein from taxation under the provisions of the provincial statute, although neither the legal estate nor any interest therein remaining in the Crown could be liable to taxation.

Judgment appealed from (2 Alta. L.R. 446) affirmed. *Rural Municipality of North Cypress* v. *Canadian Pacific Railway Co.* (35 Can. S.C.R. 550) distinguished.

APPEAL from a judgment of the Supreme Court of Alberta (1), affirming the order of Sifton C.J., which confirmed the return of the tax commissioner, so far as it affected the lands in question.

On the 25th of February, 1910, an application, by motion to the Supreme Court of Canada,* was made for special leave to appeal from the judgment of the Supreme Court of Alberta, in view of the doubt whether or not the matter in controversy originated in an inferior tribunal, and it was urged that there should, if necessary, be special leave granted, under

(1) 2 Alta. L.R. 446.

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the provisions of the "Supreme Court Act" on account of constitutional questions and matters of great magnitude and public interest being involved in the dispute.

Chrysler K.C. supported the motion.

G. F. Henderson K.C. contra.

Judgment was reserved.

On the 3rd of March, 1910, the judgment of the court, on the motion, was delivered by

THE CHIEF JUSTICE.—This application was made before the registrar, as judge in chambers, under the provisions of section 37(*c*) of the "Supreme Court Act," for leave to appeal. The motion was enlarged by him into court.

The application arises in the following manner. The local statute of Alberta, chapter 11, of 1907, sections 90 *et seq.*, provides that the secretary of every district shall make a return of the assessable lands and also of arrears of taxes. Section 92 authorizes a judge of the Supreme Court of Alberta, in chambers, on the application of the Attorney-General of the province, to appoint a time for the holding of a court for the confirmation of the return; and section 95 provides that, any time after the expiration of a year, the Attorney-General may obtain an order from a judge, in chambers, directing that the title to the lands in arrears for taxes be vested in the Crown. In the statutes of 1908, chapter 7 (Alta.), it is provided that where jurisdiction is given to a judge, as *persona designata,* he should be deemed to have the jurisdiction

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of a judge of the court to which he belongs, and that his orders should be enforced as other orders of the court. By the same Act an appeal is given to the full court from his judgment, after leave has been obtained.

In the present case the lands of the Calgary and Edmonton Land Company were returned by the secretary of the district as in arrear for taxes, and this return was confirmed by the Chief Justice of Alberta, and, upon an appeal from his order of confirmation, the appeal was dismissed and his order was affirmed by the unanimous judgment of the full court. The land company now applies for leave to appeal under section 37(*c*) of the "Supreme Court Act," where an appeal is taken by leave of the Supreme Court of Canada or a judge thereof, although the case may not have originated in a court of superior jurisdiction.

Without expressing any opinion as to whether, in the circumstances, it was necessary to move for leave, we think it is a proper case in which to grant the motion, *quantum valeat,* because of the magnitude of the interests involved. The motion is granted without costs.

The questions at issue on the hearing of the appeal on the merits are stated in the judgments now reported.

Ewart K.C. and *Laird* for the appellants.

S. B. Woods K.C., Deputy Atorney-General for Alberta, for the respondent.

THE CHIEF JUSTICE.—I would dismiss for the reasons given by Mr. Justice Beck in the court below.

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DAVIES J.—This is an appeal from the judgment of the Supreme Court of Alberta dated 24th December, 1909, dismissing the appellant's appeal from the order of the Honourable Chief Justice Sifton, which latter is dated 2nd March, 1909.

The order of the Chief Justice was made by him under the powers vested in him by section 93 of "The Local Improvement Act" of the Province of Alberta, being chapter 11 of the Statutes of Alberta (1907), and the effect of it was to confirm the return of arrears of taxes for Local Improvement District No. 607 of the Province of Alberta in respect of the north-east quarter of section 3, township 16, range 2, West of the fifth meridian, for the year 1906, these arrears amounting to $2. This land belongs, it is claimed, to the appellant, having been acquired by it under the circumstances hereinafter set out. The effect of the confirmation of the return of the arrears of taxes on this land is to vest it or the appellant's interest in it in the Crown for the public use of the province, subject, however, to redemption by the owners, as in the statute set out.

As the case was admittedly a test one and involved important questions affecting the public interests depending upon the proper construction of the "Local Improvement Act" of Alberta (1907), and of Canada's "Constitutional Act" (B.N.A. Act, 1867), special leave to appeal to this court was granted to appellant.

The circumstances under which the appellant became possessed of the lands in question are as follows:

By statute of Canada, 53 Vict. (1890), ch. 4, it was provided that the Governor-General in Council might grant a subsidy in Dominion land to the Calgary and

Edmonton Railway Company (the predecessors in title of the appellant) towards the construction of the railway to an extent not exceeding six thousand four hundred (6,400) acres for each mile of the company's railway from Calgary to a point at or near Edmonton on the North Saskatchewan River, a distance of about one hundred and ninety (190) miles, and also to an extent of six thousand four hundred (6,400) acres for each mile of the company's railway from Calgary to a point on the international boundary between Canada and the United States, a distance of about one hundred and fifty (150) miles, such grant to be made in the proportion and upon the conditions fixed by order-in-council made in respect thereof and except as to such conditions to be free grants, subject only to the payment of the costs of survey and incidental expenses at the rate of ten (10) cents an acre in cash on the issue of patents therefor.

By order-in-council, 18th November, 1891, supplementing a previous order-in-council of the 27th June, 1890, the Government of Canada reserved and set apart (amongst others) the lands in question for the purpose of the land grant of the Calgary and Edmonton Railway Company, subject to its being found that it had not been disposed of or reserved prior to 27th June, 1890, this land (amongst others) having been applied for by the railway company on 20th October, 1891, and having been earned by the company at that time. These lands (amongst others) were transferred by deed of bargain and sale dated 13th December, 1902, by the railway company to the appellants and patent was issued to the appellants therefor on 19th June, 1907. The main issue, therefore, involved in this appeal is whether the appellants can be validly assessed

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for taxes in respect of this land in 1906, patent for it not being issued to them in respect of it until 1907.

Questions which were raised by the appellants arising out of the provisions of the order-in-council as to the lands reserved being fairly fit for settlement, and as to their not having been sold or disposed of prior to the 27th June, 1890, were withdrawn by Mr. Ewart during his argument at bar. He rested his appeal upon two points. First, that taxes could not validly be assessed upon the lands for the year 1906, because the patent from the Crown therefor did not issue till the year 1907, and next, because the second section of the "Dominion Act," 53 Vict. ch. 4, granting the subsidies in lands to the railway company in aid of the construction of the railway provided that

> such grants should be free grants subject only to the payment by the grantees respectively of the cost of the survey of the lands and incidental expenses at the rate of ten cents per acre in cash on the issue of the patents therefor.

The argument, as I understand it, on the second point was that, as the statute provided that the grants thereof were to be "free grants" subject only to the payment of ten cents per acre for cost of survey the lands granted could not be liable for provincial taxation before the patent issued; otherwise they would not be free grants.

I confess myself quite unable to appreciate this point. The term "free grants" mentioned in the statute meant free so far as the Crown granting the lands was concerned. It meant free from any of the customary charges made by the Government in selling its vacant lands to settlers or others, and from any charges of any kind by or on behalf of the Crown excepting those expressly mentioned for survey fees. It could not, in my opinion, be intended to exempt the

beneficial interest of the railway company in the lands from liability to local taxation which it otherwise would be subject to after it came into existence, and before the patent issued. The term "free grant" meant free as far as the Crown granting the lands was concerned, not free from liens or charges which might attach to the lands by law by virtue or in consequence of the acquisition by the railway company of a beneficial interest therein. Such a construction as that claimed involves, I think, an unwarrantable extension of the language of the statute, the meaning of which seems reasonably clear to me.

The main question, however, remains, which is substantially whether the Alberta "Local Improvement Act," chapter 11 of 1907, which was a revision of chapter 24 of 1903, as amended by chapter 8 of 1904, and chapter 11 of 1906, applied only to lands the title to which had passed by patent from the Crown or was applicable to the beneficial interest of an owner of lands the title to which had not so passed.

Reference was made during the argument to the decision of this court in *Rural Municipality of North Cypress* v. *Canadian Pacific Railway Co.*(1), on the construction of the tax-exemption section in the Canadian Pacific Railway contract expressly exempting the lands of that company from taxation for twenty years "from the grant thereof from the Crown." I cannot see how that case bears upon the case now before us. It was upon the express language of that exempting section that the decision of this court rested. No such language or any language analogous can be found in the statutes or orders-in-council which we have to construe in this case. The only language which can be

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invoked to support the contention is that of the second section of the "Subsidy Act" before mentioned as to the grant to the railway company being a free grant. I have already dealt with that holding that it simply meant free so far as any imposition or charge by the Government of Canada, the granting party, is concerned, but is not in any way restrictive of the jurisdiction of the province over taxation for provincial purposes.

That being so the only questions remaining to be considered are the 125th section of the "British North America Act, 1867," which reads that

> no lands or property belonging to Canada or any province shall be liable to taxation,

and the meaning and scope of the "Local Improvement Act."

The lands in question were admittedly at one time Dominion lands within the meaning of that section. They were vested in the Crown subject to the control of Parliament.

By the "Subsidy Act," 53 Vict. ch. 4, Parliament had legislated declaring that the Governor in Council might grant the subsidies in land thereafter mentioned, (*inter alia*), to the Calgary and Edmonton Railway Company, 6,400 acres for each mile of the company's railway from Calgary to a point at or near Edmonton, and further declaring that such grant might be made

> in the proportion and upon the conditions fixed by orders-in-council, and that except as to such conditions the grants should be free grants,

subject only to the costs of survey, etc.

From the evidence before us it is clear that the lands in question were earned by the railway com-

pany, that they with others were selected by the company to answer the subsidy grant; that application was made to the Governor in Council for the necessary allotment of the lands to them; that the necessary order-in-council was passed "reserving and setting apart for the purposes of the land grant" to that railway company, (*inter alia*), the lands in question; that prior to the date when the taxes complained of were imposed the railway company had sold, assigned and transferred the lands in question with others to the appellants in this action, and that subsequently, on the 19th June, 1907, the patent for the lands in question issued to the appellants.

Can these lands be held, notwithstanding the dispositions of them so made by the Parliament of Canada, the Governor in Council acting under the authority of that Parliament and the railway company, still to be lands belonging to Canada and not liable to taxation until after the patent issued ?

The legal title, it is true, still remained in the Crown until the patent passed, but the equitable title had become vested in the appellants to whom it had been transferred by the railway company. The interest of the Crown whatever it might have been could not be taxed, but the beneficial interest of the appellants certainly was not exempted under or by virtue of the section of the "British North America Act, 1867," under review. Canada had no interest in the land after the consideration for which it was stipulated to be granted to the railway company had passed beyond the right to the cost of surveying the same which was to be collected when the patent issued. The whole beneficial interest having passed to the company and the bare legal estate remaining in the

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Crown the land no longer can be said to be land belonging to Canada within the meaning of the section. The exemptions provided for by that section are for the protection of the interest of the Crown only, not of those who have derived beneficial interests in lands from the Crown.

The only remaining question is whether or not the provisions of the "Local Improvement Act," under which the taxes were assessed, are comprehensive enough to cover that beneficial interest.

The Crown is not mentioned in that "Local Improvement Act," and it is not, of course, contended that any interest the Crown may have had could be legally assessed or affected by the assessment of the lands. What is contended is that all of the interest of the appellants was assessed and was condemned, and that, subject to the right of redemption reserved by the statute, the order of the Chief Justice operated to vest in The King, in right of His provincial government, the whole beneficial interest of the appellants in the land.

A reference to the Act in question shews that its scope and purpose was to embrace within the lands liable to be assessed and taxed every beneficial interest therein. Here we have only to deal with the legal estate which remained in the Crown and which the statute in no way affects or touches and the beneficial interest which had passed to the company and which I think clearly came within the interests assessable under the Act.

The interpretation section of the statute makes this abundantly clear. The conclusion I reach, therefore, is that the appellants had a beneficial interest in the lands in question which was subject to taxation

under the Act, and that the fact of the legal estate in the lands still remaining in the Crown made no difference and created no exemption in favour of the beneficial owner, the appellants, the Crown's interest being in no way affected.

The appeal should be dismissed with costs.

IDINGTON J.—This is an appeal from the Supreme Court of Alberta, *en banc,* in a matter which came before it for the interpretation of "The Local Improvement Ordinance of the North-West Territories" and amendments thereto, which seem to have been enacted by local legislative authority previous to the creation of the Province of Alberta, yet remain as the taxing statutes of that province, and have since been supplemented by additions to the legal machinery for enforcing the rates when fixed, and determining the legality of the proceedings.

The questions raised are relative to the liability of certain lands, now vested in the appellant, to taxation and to have payment of the taxes imposed by virtue of said statutes enforced in the mode provided therein.

I do not think it necessary to state in detail all the legislation that may be brought into action in this regard but, to illustrate, may briefly state sufficient thereof to understand how this case arises. The council for a district is given power to levy, in the manner and to the extent provided, upon every owner or occupant in the district "for all lands owned or occupied by him" and for that purpose to frame an assessment roll in which has to be set out each lot or parcel of land owned or occupied and the number of acres it contains, with the name and address of the

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person assessed, and the amount of assessment. And if the owner is not known the lot or parcel has to be set out, and the fact stated that the owner is unknown. Provision is made for an appeal therefrom by parties aggrieved and the final determination thereof by a justice of the peace. If the taxes are not paid within a stated time after notice, distress may be made of the goods of the person who ought to pay the taxes.

Section 57 is as follows:—

> 57. The taxes accruing upon or in respect of any land in the district shall be a special lien upon such land having priority over any claim, lien, privilege or encumbrance thereon.

The taxes might be recovered also by suit.

In the event of taxes not being paid a return is made by the secretary of the district shewing all lands in the district upon which taxes remain unpaid. And other returns are required at the same time and the returns so made then constitute a return which is the foundation for the proceedings taken herein, and it is declared *primâ facie* evidence of the validity of the assessment and imposition of the taxes as shewn therein, and that all steps and formalities prescribed by this ordinance had been taken and observed.

Thereupon the Attorney-General may apply in chambers to a judge of the Supreme Court of Alberta for confirmation of this return.

Machinery is provided for advertising, and notifying by mail, the parties concerned, of the proposed sitting of that court, and the time and place fixed by the judge, and at the time and place designated, the judge is required to hear the application, and all parties who appear thereon. Thereupon the judge is to determine whether the taxes in question respectively upon each parcel in the return, are due or

not, and such adjudication being made, the effect of finding any parcel in arrears for two years, is declared

to vest in the Crown for the public use of the territories the said lands subject, however, to redemption by the owners respectively of the said lands at any time within one year from the date of the adjudication, etc.

These proceedings having been taken and the lands in question herein, having been so adjudged liable to forfeiture and forfeited accordingly subject to redemption in respect of taxes the appellants herein appealed to the court, *en banc,* and that appeal was dismissed.

Thereupon the appellants asked leave to appeal to this court and it was granted by virtue of section 37, sub-section (*c*) of the "Supreme Court Act," yet the respondent claims there is no jurisdiction to hear an appeal of the kind.

Inasmuch as section 48 of the last named Act is specially designed for the purpose of dealing with cases of improper assessment I was at first doubtful if the sub-section (*c*) of section 37, wide as it is, could have been intended to apply to a class of cases of the kind in question. It may, however, well be held that this has not to do with assessment, but is a judicial proceeding for the purpose of ascertaining and determining relative to the regularity of the proceedings before executing the purpose of the legislation and may be looked at just as a quieting title proceeding might be.

I am, on consideration, inclined to think this the case.

Assuming jurisdiction exists, we must observe the nature of the question raised.

It is this. The lands in question form part of a land grant given to the Calgary and Edmonton Railway Company, by way of subsidy, out of the

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Crown lands, in what is now the Province of Alberta. The concession was made by virtue of a Dominion statute passed in 1890. The patent granting the lands in question, issued to appellants on 19th June, 1907, after the railway company had transferred such lands to the appellants by a deed dated 13th December, 1902.

The taxes in question consist of ratings made in 1906 and 1907. And it is contended that inasmuch as these lands remained in these years vested in the Crown on behalf of the Dominion, they remained non-assessable until after the issue of the patent and, hence, were non-forfeitable to the Crown on behalf of the province.

A good many subsidiary points were taken (but later abandoned), in argument to support the position that though in fact forming ultimately part of the subsidy to the railway company which actually passed to the company or its assignees they had not been so definitely designated until the issue of the patent, as to transfer any interest in them to the railway company, or their assignees, the appellants, until the patent issued.

The question raised is thus reduced to the construction of the taxing ordinance and amendments, and their operative effect when the appellants had acquired an interest of any kind in the lands so long as they remained vested in the Crown on behalf of the Dominion.

We must if we would understand the statute and this case observe at the outset that the taxing statute in question in no way presumes to bind the Crown or to tax Crown lands as such. Then the rule of law that when a statute does not expressly or within the pur-

view of the statute apply to the Crown or its lands it is to be taken as inoperative in relation to either must be borne in mind.

Bearing that in mind how can it be said that this ordinance which makes no such pretension can be said to have any reference to a taxing or forfeiture of the title, estate or interest of the Crown ?

Once that or any such pretension is deleted, as it were, from the appearances derivable from the use of such expressions as land or lands in any of the sections brought forward for consideration and the meaning thereof restricted to the estate or interest of others manifestly taxable for their lands, or their lands in fact so rendered liable thereto, it seems clear the whole difficulty is removed and the foundation for the present contention gone.

Not only is this so, but the interpretation of the word "owner," which is as follows:—

> 13. "Owner" includes any person who has any right, title or estate whatsoever or any interest other than that of a mere occupant in any land;

and, of the words "land," "lands" or "real property," as follows:—

> 18. "Land," "lands" or "real property" includes lands, tenements and hereditaments and any estate or interest therein;

make it quite clear that nothing done can go beyond or be effective beyond those specified meanings given in the Act to the language used.

Read as interpreted by the statute the estate or interest of the appellants is all that is touched and all that becomes forfeitable or forfeited if not redeemed. And assuredly the appellants never pretended, in the courts below, nor did any one suppose, that they had not a definite interest, but it was con-

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tended, that because the patent had not issued, even if appellants' estate or interest was, in 1906, as definitely fixed as it ever could be before the patent issued and forever beyond the power of the Crown to take that right and interest away, yet it was not, until 1907, taxable, and liable to be dealt with as it was by the officers of the district, confirmed by the Chief Justice who heard the application and was upheld by the court *en banc*.

I hold quite the contrary is the meaning of the taxing statute and that the assignees of the concessionaries were, in 1906, just as taxable as are purchasers from the Crown paying their purchase money by instalments, as I presume a great part of the country in question stands to-day. To decide this test case on any other issue than the neat one of the taxability of lands or interest in lands before the issue of the patent, would be to defeat the purpose of the parties in trying to make of it a test case.

I think the appeal should be dismissed with costs.

DUFF J.—I concur in dismissing the appeal.

ANGLIN J.—Counsel for the appellants having expressly abandoned all their other objections to the order in appeal, the only questions for our consideration are:—

(*a*) Whether the interest held by the appellants in the land in question would be taxable if it had been acquired from a private owner who retained an interest similar to that held in the present case by the Crown;

(*b*) whether provincial taxation of the interest of the appellants offends against section 125 of the "British North America Act;" and

(*c*) whether, on a proper construction of the "Local Improvement Ordinance" of the North-West Territories (chapter 73 of the Con. Ord., 1905), the sole subject of taxation is the whole proprietary interest in land, or, whether any estate or interest less than the whole proprietary interest which may belong to an "owner" is also assessable.

The land in question forms part of the land subsidy authorized by the statute, 53 Vict. (D.) ch. 4, for the construction of the northern section (190 miles) of the Calgary and Edmonton Railway.

By a contract, which recites this statute and an order-in-council approving of the grant, the railway company undertook with the Dominion Government to fulfil the conditions upon which the grant of the subsidy was authorized by Parliament. Those conditions have been fully carried out. The railway company applied for, *inter alia,* the parcel of land in question (section 3, in township 16 of range 2, W. of Mer. 5), on account of the grant for the first 190 miles of railway. By order-in-council of the 18th November, 1891, which was passed on this application and stated that "the company are now entitled to have conveyed to them" lands to the extent of the area therein specified, the Government of Canada set apart, for the purpose of its subsidy, the lands for which the company asked.

Counsel were, in my opinion, well advised in withdrawing the objections which they abandoned. They were based on provisions of the order-in-council which made the allocation of the lands so set apart in some respects conditional, the point of the objections being the absence of evidence to shew that the land now in question fulfilled such conditions.

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The order in appeal confirms a "return," by the secretary of the district, of lands on which taxes remain unpaid. It has certain statutory effects. By sub-section 3 of section 83 of the taxation ordinance it is provided that

> the return for all purposes shall be *primâ facie* evidence of the validity of the assessment and imposition of taxes as shewn therein * * *

Having regard to this provision and to the facts that the objections withdrawn appear not to have been raised before the learned Chief Justice of Alberta, or, if raised, not to have been supported by evidence; that the notice of appeal to the court *en banc* contains no reference to any of them; that, in order to appeal to the full court, the land company required the leave of the Chief Justice, which was granted, no doubt, on submission to him of the notice of the proposed appeal and to enable the company to obtain a decision upon the grounds of appeal which were specified in that notice; and that leave to appeal to this court was secured on the representation that the appellants desired to present a test case to determine the liability to provincial assessment of lands comprised in the land subsidy which had been fully earned, but had not been actually patented — had the objections which were withdrawn been pressed they would probably have received scant attention.

By deed poll, of the 13th December, 1902, the Calgary and Edmonton Railway Company conveyed to the appellants all their estate, right, title, interest, claim and demand whatsoever, both at law and in equity, in and to the section of land now being dealt with. Giving due weight to the Dominion statute, to the contract between the Government and the railway company, to the company's application for specified

lands, to the order-in-council based upon such application and to the deed poll from the railway company to the appellants, I am satisfied that the section of land now in question must be deemed to have been finally and irrevocably allocated and appropriated to the land subsidy of the Calgary and Edmonton Railway Company. That company having fully earned its subsidy and being entitled *ex debito justitiæ,* upon demand and payment of the sum of ten cents per acre for cost of surveys, etc., to receive a patent of this land, I am of the opinion, that the appellants, as its grantees, acquired an interest in it, which, subject to any question arising under section 125 of the "British North America Act, 1867," might properly be subjected to provincial taxation.

By section 125 of the "British North America Act, 1867," it is enacted that

> no land or property belonging to Canada or any province shall be liable to taxation.

Assuming that beneficial interests held by subjects in lands, the legal title to, and also some beneficial interest in which is vested in the Crown in right of a province, should be deemed liable to such taxation as the ordinance of the North-West Territories authorizes, the fact that the Crown title and interest in such lands is held in right of the Dominion does not, in my opinion, render taxation of the interest of the subject-owner obnoxious to section 125 of the "British North America Act, 1867."

The existence of the legal title and a beneficial interest in the Crown, in right of the Dominion, as mortgagee for a balance of the purchase money of lands acquired by it under special legislation in connection with the winding up of the Bank of Upper Canada

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and subsequently sold in the liquidation proceedings, was held not to invalidate municipal taxation of the purchaser's beneficial interest, or equity of redemption, and its sale for arrears of such taxes, the title taken by the tax-sale purchaser, however, being declared to be subject to the mortgage held by Her Majesty, and the operation of the treasurer's deed being restricted to passing the estate subject to such mortgage. *Regina* v. *County of Wellington* (1). The trial judge had held the entire sale invalid. The Divisional Court modified his judgment as above stated. On appeal to the Court of Appeal for Ontario the judgment of the Divisional Court was affirmed (2). Section 125 of the "British North America Act" had been cited in argument (p. 426). A further appeal to this court was dismissed (3). The judgments in this court and in the Ontario Court of Appeal proceed upon the construction of a clause of the Ontario "Assessment Act" exempting property vested in the Crown. This sufficed for the disposition of the question directly in issue on the appeals, viz., the non-liability to taxation of the Crown interest in the lands. But it seems scarcely probable that, if the view of the Divisional Court, that

> the interest of the defendant John Anderson in the land was, however, subject to taxation and to be sold for arrears of taxes and the sale and treasurer's deed operated to pass that estate,

had not been approved, there would have been no observation upon it by any of the judges in either appellate court. In the Divisional Court, owing to the modification of the judgment at the trial, it was necessary to pass upon the validity of the tax on Ander-

(1) 17 O.R. 615. (2) 17 Ont. App. R. 421.
(3) *Sub nom. Quirt* v. *The Queen*, 19 Can. S.C.R. 510.

son's interest, which was challenged. We have, therefore, the direct authority of the opinion of that most careful and able judge, the late Mr. Justice Street, concurred in by the present learned Chief Justice of the King's Bench of Ontario, that it is within the power of a province to authorize the taxation of the beneficial or equitable interest of a subject in lands of which the Crown in right of the Dominion holds the legal title and in which it has some beneficial interest as well. I think that full effect is given to section 125 of the "British North America Act, 1867," by holding that it precludes the taxation of whatever interest the Crown holds in any land or property and that so long as such interest subsists, the taxation of any other interest in the land and any sale or other disposition made of it to satisfy unpaid taxes, while valid, is always subject to the rights of the Crown which remain unaffected thereby. *Attorney-General of Canada* v. *City of Montreal*(1).

Finally, I think it reasonably clear that the interest of the appellants in the lands in question is, as a subject of taxation, within the purview of the Consolidated Ordinance of the North-West Territories. By sections 49 and 72 the council is empowered to levy a tax "upon every owner or occupant in the district for all land owned or occupied by him." By sections 57 and 77 the taxes are declared to be

> a special lien upon such land having priority over any claim, lien, privilege or incumbrance thereon.

By section 85, land in arrear for such taxes, duly returned under section 83, is, upon judicial confirmation of the return, vested

(1) 13 Can S.C.R. 352.

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in the Crown for the public use of the Territories * * * subject, however, to redemption by the owners respectively of the said lands at any time within one year.

By section 2, sub-section 13

"owner" includes any person who has any right, title or estate whatsoever, or any interest other than that of a mere occupant in any land,

and by section 2, sub-section 18,

"land," "lands" or "real property" includes lands, tenements and hereditaments and any estate or interest therein.

See *Dilworth* v. *Commissioner of Stamps*(1).

The enacting language of section 49, read in the light of the interpretative clauses, is wide enough to embrace such an interest as that of the appellant. The fact that Crown interests are not expressly exempted, as they are in the Ontario Act, probably *ex majori cautelâ,* signifies nothing. The general rule that the Crown is not bound unless expressly named would apply: *Mersey Dock Trustees* v. *Cameron*(2); and the exemption under section 125 of the "British North America Act, 1867," must always be read into any Dominion or provincial taxing Act which does not expressly exclude it. Having regard to the apparent policy of the North-West ordinance to render all available lands and every interest therein subject to assessment (see section 2, sub-sections 13 and 18, and sections 52, 53, 74 and 76), and to the disinclination of the courts to give to exemptions any wider scope than a reasonably strict construction requires, Maxwell on Statutes (4 ed.), pp. 433, 439, I am of the opinion that the interest of the appellants in the land in question is within the purview of that ordinance.

(1) 11 H.L. Cas. 443. (2) [1899] A.C. 99, at pp. 105-6.

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It is that interest which is made assessable; it is the same interest which is, by the judicial order confirming the "return," vested in the Crown for the public use of the Territories. I know of no sufficient reason why it should be necessary in a general assessment Act to make special mention of such a private interest in lands more than of any other. Neither can I accede to the view that under the North-West Territories ordinance nothing short of the entire proprietory interest in land was meant to be assessed. Such a construction would involve the exemption of lessees and private occupants under the Crown which, I think it quite clear, was not intended.

For these reasons I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Lougheed, Bennett & Co.*
Solicitor for the respondent: *S. B. Woods.*