THE SOUTHERN ALBERTA LAND COMPANY (DEFENDANTS)..... } APPELLANTS;

AND

THE RURAL MUNICIPALITY OF McLEAN (PLAINTIFF)..... } RESPONDENT.

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*Feb. 1, 2.
*May 2.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Municipal corporation—Assessment and taxation—Exemptions—Crown lands—Allotment for irrigation purposes—Ungranted concession——Construction of statute—Words and phrases—"Land"—"Owner"—"Occupant"—Constitutional law—"B.N.A. Act, 1867," s. 125—Alberta "Rural Municipality Act," 3 Geo. V., c. 3—"Irrigation Act," R.S.C., 1906, c. 61.

Under sections 249, 250 and 251 of the Alberta "Rural Municipality Act," 3 Geo. V., chap. 3, as amended by section 30 of the statutes of Alberta, 4 Geo. V., chap. 7, a purchaser of lands for irrigation purposes, under the "Irrigation Act," R.S.C., 1906, chap. 61, entitled to possession and to complete the purchase and take title thereof, (such lands remaining in the meantime, Crown lands of the Dominion of Canada,) is an "occupant" of "lands" within the meaning of those terms as defined by the interpretation clauses of the "Rural Municipality Act," and has therein a beneficial and equitable interest in respect of which municipal taxation may be imposed and levied. Such interest is not exempt from taxation under sub-section 1 of section 250 of the "Rural Municipality Act," nor under section 125 of the "British North America Act, 1867." *Calgary and Edmonton Land Co.* v. *Attorney-General of Alberta* (45 Can. S.C.R. 170), and *Smith* v. *Rural Municipality of Vermilion Hills* (49 Can. S.C.R. 563), applied. The Chief Justice and Duff J. dissented.

Per Fitzpatrick C.J.—Sections 250 and 251 of the Alberta "Rural Municipality Act" make no provision for the assessment and taxation of an interest held in lands exempted from taxation.

Per Anglin J.—The provisions of the Alberta "Rural Municipality Act" relating to assessment and taxation which could affect

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* PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Duff, Anglin and Brodeur JJ.

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such lands as those in question deal only with interests therein other than those of the Crown and their value.

Judgment appealed from, 23 D.L.R. 88; 31 West. L.R. 725, affirmed, Fitzpatrick C.J. and Duff J. dissenting.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta (1) affirming the judgment of Harvey C.J. at the trial, by which the plaintiff's action was maintained with costs.

The action was to recover the amount of taxes claimed by the municipality rated upon the assessment of lands held by the company under an agreement with the Minister of The Interior for the Dominion of Canada whereby certain tracts of Dominion Crown lands were, on certain conditions, agreed to be sold to the company for irrigation purposes under the provisions of the "Irrigation Act," R.S.C., 1906, chap. 61. The company expended large sums in irrigation works upon the lands but, at the time of the assessment and the imposition of the taxes sought to be recovered, the works had not been completed according to the conditions of the agreement with the Minister and the lands had not been granted to the company but still remained ungranted Crown lands of the Dominion of Canada, subject to the agreement that they should be granted to the company upon fulfilment of the conditions as to the construction of the irrigation works and the payment of the stipulated price to be paid therefor by the company.

The issues raised on the present appeal are stated in the judgments now reported.

(1) 23 D.L.R. 88; 31 West L.R. 725.

I. C. Rand for the appellants.
Chrysler K.C. for the respondent.

THE CHIEF JUSTICE (dissenting).—The respondent, plaintiff in the action, sued the appellant as occupant of certain lands in the municipality for taxes assessed thereon for the year 1913.

The action raises various questions of importance on which I do not desire to express any opinion, confining myself to the single point which I think necessary for the decision of the case.

Chief Justice Harvey, in his reasons for judgment, says:

> It is well settled that the interest of a person in Crown lands may be taxed. It is also perfectly clear by the terms of the "Rural Municipality Act" that it is the intention to tax such interests.

I will assume the first proposition and as to the second I do not know that I am much concerned, the question being, I think, whether the intention, if such there were, has been carried out by the statute.

So far as the particular case is concerned I have come to the conclusion that there is nothing in the statute imposing on the appellant a liability for the taxes sought to be recovered.

The "Rural Municipality Act" (Alberta statutes, 1911–12, chap. 3, sec. 250), provides that in every municipality all land shall be liable to assessment and taxation with the exceptions therein mentioned, the first of these being lands belonging to Canada or to the province. Then section 251, in part:

> the assessor shall assess every person the owner or occupant of land in the municipality and shall prepare an assessment roll in which shall be set out (*a*) the name of the owner and the name of the occupant of each lot or parcel of land in the municipality which is not exempt from taxation; * * *

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(2) Such assessment roll shall be in the form following or to the like effect.

There is nothing in this form concerning lands exempt from assessment and taxation.

It is clear, therefore, that sections 250 and 251 make no provision whatever for the assessment and taxation of exempted lands, their owners or occupants. But then section 251 has been amended by section 30 of chapter 7 of the statutes of 1913 (1st sess.). There is no change except that paragraph (*a*) of subsection 1 is repealed and, in its place, is substituted the following:

> The name of the owner of every lot or parcel of land in the municipality which is not exempt from assessment and the name of the occupant of any lot or parcel of land within the municipality which is exempt from assessment.

What may be the effect of this incongruous direction for the insertion on the assessment roll of the names of occupants of lands exempted from assessment it is unnecessary to inquire; it is sufficient to point out that by itself it is quite incompetent as a law imposing taxation on the occupants of lands which are not liable to assessment or taxation.

Section 250, which is the charging section, imposes no liability on the occupants of exempted lands and section 251 is merely concerned, pursuant to section 249, with directions to the assessor as to the manner of preparing the assessment roll.

In the "Town Act," 1911–12, ch. 2, passed on the same day as the "Rural Municipality Act" there is, in section 266, after a statement of the lands exempt from assessment the following provision:

> 3. If any land mentioned in the two preceding clauses is occupied by any person otherwise than in an official capacity the occupant shall be assessed therefor, but the land itself shall not be liable.

A similar provision to the one in the "Town Act" is to be found in section 82 of the "Village Act," 1913, ch. 5, which was passed on the same day as the Act amending the "Rural Municipality Act."

These provisions are the same as one to be found in the Consolidated Statutes of Upper Canada, ch. 55, section 9, subsection 1.

There is another argument in favour of the above conclusion to be drawn from the fact that the Act contemplates nothing but the levy of taxes upon the assessed value of land, which value is to be its actual cash value (sections 249 and 252). Chief Justice Harvey says that it is well settled that the interest of a person in Crown lands may be taxed. "*May* be taxed,"—but there is not a word in this Act about the taxation of the interest of a person in Crown lands. The interpretation of "occupant" by section 2 is of the widest character and, amongst others, includes

> any person having or enjoying in any way or to any degree or for any purpose whatsoever the use of land exempt from taxation.

If the occupant is taxed at all then no matter what his interest in such lands may be, no matter what the value of such interest may be, he is to be held liable for the full amount assessed on the cash value of the land. Whilst I am not prepared to say that the legislature could not impose such a tax without reference to the value of the taxpayer's interest, I think it would require to be done in plain and unmistakeable language such as we certainly have not got here.

Though couched in rather obscure language there are some directions evident in the "Town Act" for assessing the interest of the occupant as may be seen in section 269 and the form given in section 270.

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In the "Village Act" the difference is clearly recognized in section 84 which provides, in part,

> the secretary-treasurer shall prepare an assessment roll which shall set out (*a*) the name of the owner and in case the land is exempt from taxation under this Act, the name of the occupant thereof and, etc.; (*b*) a brief description of each such lot or parcel of land, the number of acres which it contains, the nature of the interest therein of each person assessed in respect thereof and the assessed value of such interest.

Again it is to be noted that the whole scope of the Act is dealing with the land alone. It provides for the forfeiture of lands for non-payment of taxes. There is no such provision for selling and conveying only the interest of the occupant in Crown lands as we find in the Consolidated Statutes of Upper Canada, ch. 55, sec. 138, continued through intermediate statutes to the "Assessment Act," R.S.O. 1914, ch. 195, sec. 157.

The appeal should be allowed with costs.

Mr. Justice Anglin says:

> It is in regard to lands exempt from taxation only that there is any provision for the assessment of an occupant.

This may be open to question; grammatically the words "the use of land exempt from taxation" at the end of the definition of "occupant" have no reference to the first and second classes of persons mentioned but only to the third and fourth. Section 251 provides that the assessor shall assess any person the owner or *occupier* of land in the municipality and, by the original para. (*a*), the assessor is to set out the name of the owner and the name of the *occupant* of each lot of land not exempt from assessment. It seems possible that the amending Act meant to preserve this provision of section 251 as regards the occupant of lands not exempted.

However that may be, it is clear that in the Act itself there is no express provision for assessing lands

exempted from taxation or the occupiers thereof. Then the only provision regarding such lands is the amended section 251 (*a*) and that, in itself, is quite incompetent to impose any taxation.

But apparently Mr. Justice Anglin would hold that the amendment of section 251 (*a*) necessitates a different reading of all the taxation provisions in the Act and notably section 250 which provides that

> in every municipality all land shall be liable to assessment [except]
> 1.—All lands belonging to Canada or to the province.

Here Mr. Justice Anglin would read land, as defined in section 2, para. 15, to include any estate or interest therein.

This interpretation would have had its application to the section of the Act before the amendment of section 251 (*a*), yet admittedly the Act did not originally tax exempted land, its owner or occupier.

DAVIES J.—The controversy in this appeal raises several questions. One the constitutional validity of those sections of the "Rural Municipality Act" which, it is contended, impose liability for assessment and taxes upon the "occupant," as therein defined, of land exempted from assessment and taxation; and the other whether even if *intra vires* the clauses really authorize the imposition of taxes upon an "occupant" of exempted land; and, assuming they do so, whether the defendant, appellant, is such an "occupant" under the facts stated in the record as makes it liable to be assessed and taxed for them.

Under the interpretation clause of the Act, the "owner" of lands *not exempt* from taxation and the "occupant," within the meaning of that term, of exempted lands are to be so assessed and consequently liable for the assessment.

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"Land" is defined, for the purpose of assessment and taxation, to mean

land or any estate or interest therein exclusive of the buildings or other improvements thereon

and "improvements" to mean

any increase in the value of the land caused by any expenditure of either labour or capital thereon.

Sections 249, 250 and 251 are the sections which, construed in the light of the interpretation sections, relating to the terms "owner," "occupant" and "land," have to determine the questions for our decision.

The scheme of the Act appears to be to make all lands within the province liable to be assessed and taxed at their prairie value, or value without improvements, which, not being exempt from taxation, are held by an "owner" as defined, or, being so exempt, are held or possessed or entitled to be so by an "occupant," as defined, and to make such owner or occupant as the case may be liable for the taxes so assessed.

Section 249 is as follows:

All municipal taxes shall be levied equally upon all ratable land in the municipality according to the assessed value of such land and it shall be the duty of the assessor to make the assessment of such land in the municipality in the manner hereinafter provided.

Section 250: In every municipality all land shall be liable to assessment and taxation subject to the following exemptions:

1. All lands belonging to Canada or to the province.

The other exemptions do not affect this case.

Section 251: As soon as may be in each year, but not later than the first day of July, the assessor shall assess every person the owner or occupant of land in the municipality and shall prepare an assessment roll in which shall be set out as accurately as may be—

(a) The name of the owner of every lot or parcel of land in the municipality which is not exempt from assessment, and the name of the occupant of any lot or parcel of land within the municipality, which is exempt from assesments and post office address, if known, of every such owner or occupant.

(b) A brief description of each such lot or parcel of land, the number of acres which it contains and the assessed value thereof.

(2) Such assessment roll shall be as in the form following or to the like effect or in such form as may be prescribed from time to time by the Minister:

So that by these sections "municipal taxes" are to be levied equally upon "all" *ratable land* in the municipality according to the assessed value of such land

and the assessor is bound to assess every person the owner or occupant of land in the municipality

and to prepare an assessment roll setting out, as accurately as may be, the name of every owner of every lot or parcel of land in the municipality not exempt from assessment and the name of the "occupant" of every lot or parcel which is "exempt."

The appellant company is the assignee of an agreement made, in 1906, between the Minister of the Interior of Canada and one Robins whereby the Crown agreed to sell and Robins agreed to purchase a large tract of land in Alberta at a specified price for irrigation purposes, expenditure on these works approved by the Crown to be credited on the purchase money and balance to be paid in cash.

All available lands in two defined sections were allocated by order-in-council to this agreement and the lands in question in this appeal are within one of these sections. No questions as to selection or availability are involved. At the date of the assessment in dispute about $5,000,000 had been spent by the appellant upon these lands in irrigation works and it was estimated that it would take another $2,000,000 to complete the works. Under clause 7 of this Robins agreement, provision is made entitling the purchaser

to complete the purchase and take title for any part of the lands applied for after not less than $100,000 has been expended in connection with the works.

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The purchase money was made payable in six annual instalments beginning the 1st July, 1910. Clause 10 provided that

any of the lands that remain unsold at the expiration of 15 years from the date of these presents shall revert to the Crown.

Now under the facts of this case as they appear in the record, and of which I have sketched above the merest outline, I do not entertain any doubt that the appellant at the time of the assessment complained of was an "occupant" of these lands within the meaning of that term as interpreted by the statute and to such an extent as to render it liable to be assessed and taxed in respect of them. Its rights under the Robins lease, licence or agreement from the Crown, whatever you may choose to call it, were such as to entitle it to enter upon the lands and make the irrigation improvements. As a fact it did so enter and had made an expenditure of some millions of money for these improvements.

The legal title to the land was it is true still in the Crown but the company's right to extinguish that title and obtain its patent under the agreement was clear as and when it chose to do so.

Beyond any doubt it had an equitable and beneficial interest in these lands capable of being enjoyed and enforced as against the Crown and such an interest as I cannot doubt comes within the very words of the interpretation of "lands" in the Act.

As such it seems to me to come within the decision of this court in *The Calgary and Edmonton Land Company* v. *The Attorney-General of Alberta*(1). The interest of the appellant in these lands was a beneficial one and the facts of the case, I agree with the

(1) 45 Can. S.C.R. 170.

courts below, bring it within the interpretation clause of "occupant" as above set out and within the principle upon which the *Calgary and Edmonton Land Company's Case*(1) was decided by this court. The interest of the Crown, whatever it might have been, could not of course be taxed but the beneficial or equitable title of the appellant was certainly not exempted under the "British North America Act, 1867."

It seems to me, therefore, that the only question open is whether the language of the "Rural Municipality Act" covers such a case as this and such an interest in these lands as under the agreement the defendant appellant had. I have already set out the clauses of the Act and in my judgment these clauses are comprehensive and clear enough to enable that beneficial and equitable interest of the appellant in these lands to be assessed and taxed and to impose upon the company a liability to pay them as found by the judgments appealed from.

For these reasons, I would dismiss the appeal with costs.

DUFF J (dissenting).—I think the appeal should be allowed and the action dismissed with costs.

ANGLIN J.—Two questions are presented on this appeal:—

(*a*) Whether the appellant company is an "occupant" of certain lands within the meaning of the assessment clauses of the Alberta "Rural Municipality Act" of 1911-12 (chap. 3), as amended by chapter 7 of the statutes passed in the first session of 1913:

(1) 45 Can. S.C.R. 170.

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(*b*) Whether the taxation in question offends against section 125 of the "British North America Act," by which it is enacted that

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

By an agreement, made in 1906, under section 51 of the "Irrigation Act" (R.S.C., chap. 61) His Majesty the King, represented by the Minister of the Interior, agreed to sell, and the assignors of the appellant agreed to purchase 380,573 acres of land within a defined tract at the price of $3 an acre, of which $2 might be paid by crediting expenditure to be made by the purchasers on irrigation works approved by the Crown, and the balance in cash. At the instance of the company all available lands in two defined sections were allocated by order-in-council to this agreement and it was provided that the balance of the agreed acreage should be selected by the purchaser from available lands in another section. The lands in question are within one of the two former sections and their availability is not in question. The works were approved and their construction authorized under section 20 of the "Irrigation Act" on the 16th March, 1909, and at the date of the assessment in question about $5,000,000 had been spent on them and it was estimated that a further expenditure of about $2,000,000 would complete them. After the company had spent $100,000, under clause seven of the agreement, it was entitled

> to complete the purchase and take title for any part of the lands applied for.

The purchase money was made payable in six equal annual instalments, of which the first fell due on the 1st July, 1910. All land unsold on the 26th June, 1921, reverts to the Crown. There is no evidence that title to any lands had been acquired

under the seventh clause of the contract, but it is conceded that in the tracts specified there are 412,041 acres of available lands.

The appellant was assessed as "occupant" of the lands under sections 249-251 of the "Rural Municipality Act" of 1911–12, as amended by chapter 7 of the statutes passed at the first session of 1913. The material parts of the legislation, as so amended, are as follows:—

Section 2. In this Act, unless the context otherwise requires, the expression

(8) "Owner" means and includes any person who appears by the records of the Land Titles Office for the land registration district within which such land is situated, to have any right, title or interest in the land within the limits of the municipality other than that of a mortgagee or incumbrancee not exempt from taxation.

(9) "Occupant" includes the inhabitant occupier, or, if there be no inhabitant occupier, the person entitled to an absolute or limited possession; any person holding under a lease, licence, permit or agreement therefor; any person holding under an agreement of sale or any title whatsoever, and any person having or enjoying in any way or to any degree or for any purpose whatsoever, the use of land exempt from taxation. * * * *

(15) "Land" or "property" includes lands, tenements and hereditaments and, for the purpose of assessment and of taxation only, "land" means land or any estate or interest therein exclusive of the value of the buildings or other improvements thereon.

Section 249. All municipal taxes shall be levied equally upon all ratable land in the municipality according to the assessed value of such land and it shall be the duty of the assessor to make the assessment of such land in the municipality in the manner hereinafter provided.

Section 250. In every municipality all land shall be liable to assessment and taxation subject to the following exemptions:

(1) All lands belonging to Canada or to the province.

* * * * * * *

Section 251. As soon as may be in each year but not later than the first day of July the assessor shall assess every person the owner or occupant of land in the municipality and shall prepare an assessment roll in which shall be set out as accurately as may be

(a) the name of the owner of every lot or parcel of land in the municipality which is not exempt from assessment and the name of the occupant of any lot or parcel of land within the municipality which is exempt from assessment and post-office address, if known, of every such owner or occupant;

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(b) a brief description of each such lot or parcel of land, the number of acres which it contains and the assessed value thereof.

Under sub-section 15 of section 7 of the "Interpretation Act," chap. 3 of the Alberta statutes of 1906—the expression "person" includes any body corporate and politic.

The judgment of the learned Chief Justice, who tried the action, rested upon his view that the fact that

the defendant is entitled to become owner of the lands upon compliance with the terms of the purchase agreement" brings it "within the definition of the word 'occupant' in the Act," it being "perfectly clear by the terms of the 'Rural Municipality Act' that it is the intention to tax such interests.

In delivering the judgment of the Appellate Division, Mr. Justice Walsh apparently proceeded upon what he regarded as

a written admission in the record "that the defendant is the holder of the land * * * under and by virtue of the contract in question," the assignment thereof to it and the orders-in-council relating to it.

But the only admission to that effect which I can find in the record is contained in a document entitled

Facts admitted *by the plaintiff* for the purposes of the trial herein.

There is no such admission by or on behalf of the defendant.

In its statement of defence

the defendant denies that it was in 1913, or in any year, the occupant of any of the lands in the statement of claim mentioned,

and, in the document of admissions by the plaintiff, it is stated that "the defendant is not in actual occupation of the lands mentioned."

The first question, therefore, is whether upon the finding of the learned trial judge (which the documents in evidence appear to justify) that at the date of the assessment the defendant was entitled, upon compliance with the terms of its contract of

purchase, to become the owner of the lands in question, as lands definitely allocated thereto, it should be held to be a "person entitled to a limited possession," or a "person holding under an agreement of sale or any title whatsoever," or a "person having or enjoying in any way to any degree or for any purpose whatsoever, the use of land exempt from taxation."

Having regard to the terms in which "owner" is defined in the sub-section immediately preceding, and to the obvious purpose made manifest by the provisions of section 251, I have no difficulty in reading into sub-section 9, defining "occupant," immediately after the words, "absolute or limited possession," the words, "of land exempt from taxation." It is in regard to such lands only that there is any provision for the assessment of an "occupant." [Sec. 251 (*a*).]

The lands which the defendant company is entitled to acquire are within the tract for the improvement of which by irrigation its system of works is designed and approved, as the agreement itself shews and section 51 of the "Irrigation Act" (R.S.C., chap. 61) requires. The defendant company, no doubt, had the right, without taking the expropriation proceedings provided for by sections 28 and 29 of the "Irrigation Act," to enter upon and take possession of any part of the lands in question required for the construction of its works and is thus an occupant within the words of the definition,

> a person having or enjoying in any way or to any degree or for any purpose whatsoever the use of land exempt from taxation;

and also as "a person entitled to a limited possession." Having regard to the definition of "land" as meaning "lands, tenements and hereditaments and any estate or interest therein," the company is likewise a "person holding under an agreement of sale."

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A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another; he does not necessarily occupy. *Rex* v. *Ditcheat* (1).

Two persons may be "holding" the same lands in distinct rights and with distinct interests. *Ward* v. *Const*(2). Under an agreement to purchase land the interest of the purchaser is "held" by him although he should have neither possession nor an immediate and unconditional right to possession; and it is unquestionably an interest in the land. *Williams* v. *Papworth*(3). The courts of Saskatchewan, in my opinion, have rightly held that the appellant was an "occupant" of land exempt from assessment within section 251 of the "Rural Municipality Act" and that its "interest therein" was assessable and liable to taxation, being "ratable land" under section 249, and "land" under section 250.

So long as the assessment is confined to the interest in the land with which the Crown has parted to such an occupant, it neither exceeds the power of

direct taxation within the province in order to the raising of a revenue for provincial purposes

conferred on the province by clause 2 of section 92 of the "British North America Act," nor conflicts with the exemption of "lands or property belonging to Canada" under section 125 of that Act. This court has so held in *Calgary and Edmonton Railway Co* v. *Attorney-General of Alberta*(4); and in *Smith* v. *Rural Municipality of Vermilion Hills*(5).

It was argued, however, that because section 249 directs the levying of taxes

upon all ratable land in the municipality according to the assessed value of such land

(1) 9 B. & C., 176, at p. 183.
(2) 10 B. & C., 635, at p. 647.
(3) [1900] A.C., 563, at p. 568
(4) 45 Can. S.C.R., 170.
(5) 49 Can. S.C.R., 563.

and section 251 (*b*) requires the assessor to state the assessed value of each lot or parcel of land, exempt or not exempt, and section 252 requires that "land shall be assessed at its actual cash value", the subject of assessment and taxation is the land itself and not merely the interest therein of the "occupant." But this construction ignores not only the provision of clause 15 of the interpretation section under which, unless the context otherwise requires, "land" may be read "interest in land," but also the facts that under section 249 only "ratable land" is subjected to taxation, and that the concluding clause of that section directs the assessor to make the assessment "in the manner hereinafter provided." There immediately follows in the charging section (sec. 250), an explicit declaration of the exemption of "all lands belonging to Canada," *i.e.*, of the interest therein of the Crown, and, in section 251, a direction for the entry, in the case of such exempted land, of the name not of the "owner" but of the "occupant" whom the assessor is to "assess" for it. Sections 249 and 251 deal with land not exempt as well as with exempted land, and there is no reason why as to the former, for which the "owner" is to be assessed, "land" should not be read as meaning "lands, tenements and hereditaments," and as to the latter, for which the "occupant" is to be assessed, as meaning an "estate or interest therein," *i.e.*, in the "lands, tenements or hereditaments." Liability is thus imposed on the occupant personally as well as upon his "interest" in the land otherwise exempted. Both are "assessed."

The intention of the legislature to provide only for the assessment of interests liable to taxation, and in nowise to impinge upon the prohibition of section 125, "B.N.A. Act," seems manifest. The statute

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being readily susceptible of a construction which will carry out that intention and thus keep it within the legislative jurisdiction of the province, that construction should certainly be given to it rather than one from which "it would follow as a necessary result that the statute was *ultra vires*." *Macleod* v. *Attorney-General for New South Wales*(1); *Llewellyn* v. *Vale of Glamorgan Railway Co.*(2); *Countess of Rothes* v. *Kirkcaldy and Dysart Water-Work Commissioners*(3).

There is nothing in the record to warrant a finding that the taxes in question have in fact been imposed on anything greater or other than the ratable interest (sec. 249) of the appellant in the land, or that anything other or greater than the assessed value of such interest (sec. 249 and sec. 251 (*b*)), which alone is ratable, the interest of the Crown being expressly declared exempt (sec. 250), has been entered upon the assessment roll. It is with an interest therein other than that of the Crown and its value only, as I read the statute, that the assessor is directed to deal in the case of land belonging to Canada.

I would, for these reasons, dismiss this appeal with costs.

BRODEUR J.—The question in this case is whether the appellant company is an occupant within the meaning of the "Rural Municipality Act" of Alberta (ch. 3, 1911–12, sec. 2).

By that Act the municipality, respondent, is empowered to levy taxes on the owners and occupants of land of that municipality. Lands, however, belonging to the Dominion of Canada are exempt from

(1) [1891] A.C. 455, at p. 459. (2) [1898] 1 Q.B., 473, at p. 478.
(3) 7 App. Cas., 694, at p. 702.

taxation. It is provided, however, that the occupant of land exempt from taxation is liable to be assessed.

The "occupant," says section 2 of that Act as amended in the first session of 1913 by chapter 7,

> includes the inhabitant occupier or if there be no inhabitant occupier the person entitled to an absolute or limited possession; any person holding under a lease, licence, permit or agreement therefor; any person holding under an agreement of sale or any title whatsoever; and any person having or enjoying in any way or to any degree or for any purpose whatsoever, the use of land exempt from taxation.

The appellant is carrying out irrigation works in the Province of Alberta under the provisions of the Dominion "Irrigation Act." The Canadian Government have agreed to sell to that company (at the price of $3 per acre) 380,573 acres within the said tract "hereinbefore described" if that number of acres is available, and if not as many acres in the said tract as are available for such sale and purpose.

In the other clauses of the agreement, the terms of payment, the construction and operation of the irrigation works, the completion of the purchase and the taking of title for any part of the lands upon certain terms are provided for.

Clause 10 provided that any of the said lands that remain unsold at the expiration of 15 years from the date of these presents shall revert to the Crown.

By a subsequent agreement, certain other lands were substituted for those above mentioned but the agreement of substitution was made subject to the same clauses as above described.

It is pretty clear that this agreement binds the Crown to sell and the defendant to buy the available lands. Those lands which are the subject of this agreement are within the area of the Municipality of McLean. The municipality, acting under the provisions of the "Rural Municipality Act," has

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assessed the land in question and claims by the present action the amount of that assessment.

Nobody will dispute the fact that the company appellant has an interest in those lands. They are under its control. It may make irrigation works upon them and can prevent anybody else from exercising that right of occupation. The company has paid instalments on the purchase price and can dispose of them in favour of settlers.

It seems to me then that the company enjoys for those purposes the use of lands which otherwise would be exempt from taxation. But by the fact of that enjoyment, by the fact that it has an agreement for the selling of those lands, it has become an occupant as described in section 2 of the "Rural Municipality Act."

The agreement for sale has vested in the appellant company an estate and property in the land and from that day as owner or occupant it became liable for assessments which could be raised in connection with the land. It got the benefit of municipal institutions and should then pay its share for the maintenance of the municipality.

Those assessments do not affect in any way the rights of the Crown because if the property had to revert to the Crown the taxation could not affect the land and could not be claimed against the Crown. That statute does not assume to impose any taxes upon any such lands as against interest of the Crown. An interest has been granted by the Crown in the lands and taxation of the person holding that interest is not taxation of the property of Canada. A provincial legislature has the right to impose taxation upon individuals by a reference to the value of land occupied by them, even though the land should be

owned by Canada. *Church* v. *Fenton*(1); *Rural Municipality of Cornwallis* v. *Canadian Pacific Railway Co.*(2); *Rural Municipality of South Norfolk* v. *Warren* (3); *Smith* v. *Rural Municipality of Vermilion Hills*(4); *Calgary and Edmonton Land Co.* v. *Attorney-General of Alberta*(5).

I am of opinion that the assessments claimed from the appellant company have been rightly made and that the judgment condemning them to pay those assessments should be confirmed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Laidlaw, Blanchard & Rand.*

Solicitors for the respondent: *Shepherd, Dunlop & Rice.*

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(1) 5 Can. S.C.R. 239.
(2) 19 Can. S.C.R. 702.
(3) 8 Man. R. 481
(4) 49 Can. S.C.R 563.
(5) 45 Can. S.C.R. 170.