

MATTHEW J. KELLY, PAUL GAGNON AND ZEBIDEE QUIGLEY.... } APPELLANTS;

1931  
\*Feb. 17.  
\*Mar. 17.

AND

THE SAINT JOHN RIVER POWER COMPANY ..... } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK,  
APPEAL DIVISION

*Assessment and taxation—Company’s incorporating Act (1926, c. 45, N.B.) exempting (s. 23 (1)) “the company and its property” pertaining to certain power development, from taxation—Construction—Assessment for income tax.*

The respondent company was incorporated by c. 45, 1926, N.B., with power to generate and sell electric power. S. 23 (1) provided that for a certain period “the company and its property in New Brunswick pertaining to the development of power on the Saint John River shall be exempt from all municipal and other taxation and assessment” (other than a fixed school tax not in question). The question before this Court was whether or not the company was liable to be assessed in the town of Grand Falls, N.B., (where its head office was) upon or with respect to income derived by it from or by virtue of the sale of power generated at its plant in Grand Falls from the use of the waters of said river.

*Held:* The company was not liable to be so assessed. The exemption extended, not only to property, but also to the company itself, and included income. The mention of its “property” in said s. 23 (1) did not create an inference of intention that property only should be exempt. The plain language of the exempting provision left no room for operation of any rule for strict construction against the company invoked on grounds that its incorporating Act was in the nature of a private Act and that it was claiming exemption from taxation. *The Interpretation Act*, R.S.N.B., 1927, c. 1, s. 6; *Foley v. Fletcher*, 3. H. & N. 769, at 780-781; *City of Halifax v. Nova Scotia Car Works, Ltd.*, [1914] A.C. 992, cited. Further, the omission of mention of the company itself in s. 23 (2) exempting “the company’s property” pertaining to transmission of power, was significant.

APPEAL from the judgment of the Supreme Court of New Brunswick, Appeal Division.

The present respondent, the Saint John River Power Company, applied for an order for a writ of certiorari for the removal into the Supreme Court of New Brunswick of a certain assessment made by the present appellants, as assessors for the Town of Grand Falls in the Province of New Brunswick, in and for the year 1929, with a view to the same being quashed in so far as it related to income and

\*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Cannon JJ.

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to the real estate of the applicant pertaining to the development of power on the Saint John River. The order was granted and the writ made returnable before the Appeal Division of the Court, and the present appellants were ordered to show cause why the said assessment should not be quashed in so far as it related to the income and real estate aforesaid. The case was stood over, and the parties subsequently agreed upon a stated case, all question of assessment upon real estate being settled and withdrawn. The stated case was as follows:

STATED CASE

“ 1. The Town of Grand Falls was incorporated by Act of the Legislature of the Province of New Brunswick, 53 Victoria, Chapter 73. Section 62 of that Act confers upon the Assessors of the Town the following powers:

62. The Assessors shall without delay after receiving the warrants of the assessment, meet and enter into a book to be provided at the public expense, the names of all persons to be rated in the said Town, and shall distinguish therein in separate columns the real estate, personal estate and income of each person, and shall without delay, after the expiration of thirty days' notice of their appointment proceed to raise all rates, taxes or assessments levied or imposed upon the said Town, in the manner following, that is to say:—

1st. One-sixth of the whole amount of such tax, rate or assessment, shall be assessed and levied by an equal tax on the poll of every male inhabitant of the said Town of Grand Falls above the age of twenty-one years.

2nd. The remaining five-sixths of the whole amount of such rate or assessment shall be assessed and levied in due proportion upon all real estate in the said Town of Grand Falls and upon the personal estate of the inhabitants thereof, including that of any Joint Stock Company or Corporation which has its principal place of business within the Province and is situated or located in the said Town, after deducting from such personal estate the indebtedness of each inhabitant respectively, and also upon the annual income or emoluments of such inhabitants, companies or corporations derived from any office, profession, trade, business, work, labour, occupation or employment whatsoever within the Province, and not from invested real or personal estate of such inhabitants, and also upon the capital stock, income or other things of Corporations and Joint Stock Companies; \* \* \*

“ 2. The said the Saint John River Power Company was incorporated by 16 George V (1926), Chapter 45, and by Section 23 thereof was granted certain exemptions from taxation. Said section is as follows:—

23. (1) For a period of forty years from the date of the first generation of power by the Company, the Company and its property in New Brunswick pertaining to the development of power on the Saint John

River shall be exempt from all municipal and other taxation and assessment, other than a tax of five thousand dollars a year which shall be payable to the school district or districts in which the main power works of the Company at or near Grand Falls are situated and in case of more than one such district such amount shall, in case of disagreement as to the apportionment, be apportioned by the Lieutenant-Governor in Council.

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(2) The Company's property in New Brunswick pertaining to the transmission of power shall be exempt from all municipal and other taxation and assessment.

"3. The Company commenced the generation of power on or about the fifteenth day of October, 1928.

"4. The head office of the Company was in the Town of Grand Falls aforesaid during the year 1929, and the [present appellants] were the Assessors in and for the said Town for the said year.

"5. That in the said year 1929 the said Assessors assessed the said Saint John River Power Company upon and in respect to real estate of the value of \$75,000 and with respect to income in the sum of \$100,000.

"6. That on the application of the said Company a Writ of Certiorari was granted to remove into this Court the said Assessment with a view of having the same quashed and a *rule nisi* to quash the same.

"7. That the parties hereto agreed that all questions arising out of and with respect to rates, taxes and assessments, made by the said Assessors upon and with respect to real estate of the said Company have been settled and are hereby withdrawn from the consideration of this Honourable Court in this case.

"8. That this Honourable Court is asked to adjudicate upon the question of liability of the said Saint John River Power Company to be assessed by the Assessors of the Town of Grand Falls upon income.

"9. The Company during the year 1929 and previous thereto had no income except as follows:—

(a) Income derived from the sale of electricity developed in the Power Plant of the Company erected at Grand Falls to generate electricity from the use of the waters of the Saint John River.

(b) Income derived from the sale of electricity purchased from the Van Buren Light & Power Company of Van Buren, in the State of Maine, and distributed over the system formerly owned by the St. Leonard Electric Com-

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pany, Limited, a company incorporated by Act 1, George V, 1911, Chapter 129, but now owned by the Saint John River Power Company. \* \* \* The Company claims that the result of said operations for the said year 1929 was a loss. The said Assessors claim it was a profit, that the Company is not entitled to charge up interest on the investment and depreciation in arriving at the taxable amount.

“10. The questions for determination by the Court are:

“(1) Is the Company liable to be assessed in the Town of Grand Falls upon or with respect to income derived by it from or by virtue of the sale of power generated at its plant in Grand Falls?

“(2) Is the Company liable to be assessed in the Town of Grand Falls upon or with respect to income derived by it from or by virtue of the sale of power distributed in the manner mentioned in paragraph (9 b) of this Stated Case?

“11. Either party is at liberty to refer to any other statute or statutes that they may deem material.

“12. The parties have made an agreement as to costs and the Court is not asked to deal with them.”

The Supreme Court of New Brunswick answered “no” to question No. 1 submitted in the stated case, and “yes” to question No. 2, and ordered that so much of the assessment as was made upon the income derived from the sale of electricity in the company’s plant at Grand Falls be quashed.

The assessors, pursuant to special leave granted by the Supreme Court of New Brunswick, Appeal Division, appealed to the Supreme Court of Canada against the holding that the company was not liable to be assessed in Grand Falls upon or with respect to income derived by it from or by virtue of the sale of power generated at its plant in Grand Falls.

*J. F. H. Teed* for the appellants.

*P. J. Hughes K.C.* and *H. A. Carr* for the respondent.

The judgment of the court was delivered by

NEWCOMBE J.—Upon application of the respondent, and by order of the Chief Justice of New Brunswick, a writ of certiorari was issued out of the Supreme Court of the

province, to bring up an assessment made by the appellants as assessors for the Town of Grand Falls for the year 1929, with the purpose of having the assessment quashed in so far as it related to income and to real estate of the respondent appertaining to the development of power on the St. John River. The assessors made their return; some differences were determined by agreement, and a case was stated by the parties, submitting, upon agreed facts, two questions for the determination of the court. The questions are as follows:

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(1) Is the Company liable to be assessed in the Town of Grand Falls upon or with respect to income derived by it from or by virtue of the sale of power generated at its plant in Grand Falls?

(2) Is the Company liable to be assessed in the Town of Grand Falls upon or with respect to income derived by it from or by virtue of the sale of power distributed in the manner mentioned in paragraph 9 (b) of this Stated Case?

The case came before the Appeal Division of the Supreme Court, where, unanimously, the first question was answered in the negative and the second in the affirmative. The appellants thus failed in their contention upon the first question, but succeeded as to the second, and they are now appealing from the first answer.

The St. John River Power Company, respondent, was incorporated by Act of the local legislature, c. 45 of 1926, with head office at the town of Grand Falls, in the province of New Brunswick, and it was provided, by section 5, that

The Company may generate, purchase or otherwise acquire, sell, transmit and distribute electrical power and energy, and specifically, but without limiting the generality of the foregoing, the Company shall have full right and authority to develop hydro-electric power on the Saint John River at or near Grand Falls, etc.

Provisions follow conferring upon the company extensive powers, concessions and privileges in aid of the general project sanctioned by the Act.

By section 23,

(1) For a period of forty years from the date of the first generation of power by the Company, the Company and its property in New Brunswick pertaining to the development of power on the Saint John River shall be exempt from all municipal and other taxation and assessment, other than a tax of five thousand dollars a year which shall be payable to the school district or districts in which the main power works of the Company at or near Grand Falls are situated and in case of more than one such district such amount shall, in case of disagreement as to the apportionment, be apportioned by the Lieutenant-Governor in Council.

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(2) The Company's property in New Brunswick pertaining to the transmission of power shall be exempt from all municipal and other taxation and assessment.

The Town of Grand Falls was incorporated by c. 73 of 1890, and the material taxing provisions of the town are to be found in section 62, and are set out in the stated case.

The assessors are to enter the names of all persons to be rated, distinguishing in separate columns the real estate, personal estate and income of each person, and shall proceed, after the statutory delay, to raise all rates, taxes or assessments levied or imposed; one-sixth by a poll tax, and the remaining five-sixths

in due proportion upon all real estate in the said Town of Grand Falls and upon the personal estate of the inhabitants thereof, including that of any Joint Stock Company or Corporation which has its principal place of business within the Province and is situated or located in the said Town, after deducting from such personal estate the indebtedness of each inhabitant respectively, and also upon the annual income or emoluments of such inhabitants, companies or corporations, etc.

No doubt the annual income of any incorporated joint stock company or corporation, within the description of this clause, is to be assessed and the tax is to be levied thereon in proportion. It is not disputed that the words of subsection 1 of section 23, the exempting section of the company's Act of incorporation, would operate to exempt the company from this income tax, if, in declaring the exemption, the legislature had not coupled with the company its property. The words are: "The company and its property in New Brunswick pertaining to the development of power on the Saint John River shall be exempt from all municipal and other taxation and assessment," subject to an exception which is not at present material. But from the mention of property, it is said, arises the inference that it is intended that property only shall be exempt. I am unable to follow this argument, for I can imagine that a company negotiating to establish and operate works within the town might reasonably stipulate, for tax exemption, both for itself and its property; and, if that be allowed, there is certainly no general principle of interpretation by which the expression is not to have effect in any particular, once it is found, as I think it must be, that the exemption, as enacted, in terms extends, not only to the property of the company, but also to the company itself. No question is suggested as to whether the company's exemp-

tion is qualified by the words, "pertaining to the development of power on the Saint John River," which naturally, and primarily at least, have their application to the property of the company, because it appears by the case that the income in controversy is derived "from the sale of electricity developed in the power plant of the company erected at Grand Falls, to generate electricity from the use of the waters of the St. John River"; and, by reference to the frame of the question, it will be perceived that the answer subject to appeal is confined to "income derived by it (the company) from or by virtue of the sale of power generated at its plant in Grand Falls."

The appellant argues that the Act incorporating the respondent company is in the nature of a private Act, and that, therefore, and also because the respondent is claiming an exemption from taxation, the Act should be strictly construed against it, and authorities are cited; but there is nothing in any of these which was ever intended to modify or reduce the effect of a clear statutory provision. Moreover, it is declared by the R.S., N.B., 1927, c. 1, (*The Interpretation Act*), section 6, that

Every Act shall be deemed to be a public Act and shall be judicially noticed by all Judges, Justices of the Peace and others without being specially pleaded.

I think that, for a case like this, the authorities make it abundantly clear that the company is not to suffer any disadvantage by reason of the fact that it relies upon an exemption sanctioned by its incorporating Act, or for the reason that the effect of the statutory provision is to confer upon the company an exemption which, apart from that provision, it would not have possessed.

In *Foley v. Fletcher* (1), Baron Bramwell was considering the question of income tax, and he said:

I am desirous to say that I disclaim in this case acting on the maxim, that a burden shall not be imposed on the public unless by clear and unambiguous language. In *Re Micklethwait* (2), Parke B., says: "It is a well established rule that the subject is not to be taxed without clear words for that purpose; and also that every act of parliament is to be read according to the natural construction of its words." The latter is the main rule, the other subordinate. Construe the statute correctly, if its meaning can be ascertained. Maxims of the sort referred to, as frequently applied, are mere invitations to erroneous construction, though when properly understood they are quite correct. The natural course of things is, that the heir takes on the death of the person last seized;

(1) (1858) 3 H. & N., 769, at 780-781.

(2) (1855) 11 Exch. 452, at 456

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whoever seeks to disturb that rule must make out his right to do so. So, whoever seeks to impose a tax or penalty must establish the right; whoever seeks to punish must establish the guilt. The rule properly understood is, that the burden of proof is on the assessor, not that, wherever there is any doubt, a statute is to be said not to mean what it does mean.

Moreover, in the *City of Halifax v. Nova Scotia Car Works, Limited* (1), where, under an agreement with the city specially sanctioned by the legislature, the company was entitled to "a total exemption from taxation," for ten years upon its lands and buildings situated in the city, and a question arose as to whether this exemption extended to a provision whereby the owners of property fronting upon any sewer laid by the city should be contributors to the cost of its construction, according to their frontage, it was said by Lord Sumner, who pronounced the judgment of the Judicial Committee, that

So far as a simple question of interpretation is affected by presumptions at all, their Lordships are of opinion that this clause should be construed favourably to the respondents. They have performed the whole consideration on their side by establishing their works, and the consideration moving to them has been earned and ought not to be thereafter restricted. The matter is one of bargain and of mutual advantage; it is not a case of one citizen seeking to escape from his share of common burthens and so increasing pro tanto the burthen on the others.

In my view the court would not be justified to deny its proper effect to the provision of the statute whereby the company is, in plain language, declared to be exempt; and the value of this exemption, as distinguished from the exemption of property, so far as we have been shewn, appears to relate principally, if not entirely, to income.

It is also significant that by subsection (2) of the exempting section, by which "the company's property in New Brunswick pertaining to the transmission of power shall be exempt from all municipal and other taxation and assessment," the company itself is not mentioned, an omission which seems remarkable, if the intention were that the exemptions afforded by the two subsections should equally embrace both the company and its property, or should equally be confined to the company's property.

I would dismiss the appeal.

*Appeal dismissed.*

Solicitors for the appellants: *Teed & Teed.*

Solicitor for the respondent: *H. A. Carr.*