FRASER COMPANIES, LIMITED. . APPELLANT;

AND

TRUSTEES OF SCHOOL DISTRICT NUMBER ONE IN THE PARISH OF MADAWASKA AND THE TOWN OF EDMUNDSTON..... RESPONDENTS.

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*MAR. 2, 3.
*MAY 4.

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

Assessment—Fixed Valuation—School rates.

In the Town of Edmundston, N.B., the school rates are levied and collected by the school trustees and the general municipal taxes by the town officials. By a contract, validated by Act of the legislature, between the town and the Fraser Companies, the school Trustees not being parties, the valuation of the companies' property for assessment purposes was fixed at $100,000.

Held, affirming the judgment of the Appeal Division (46 N.B. Rep. 506) that this limitation does not apply to the valuation of the property for levying school rates.

APPEAL from a judgment of the Appeal Division of the Supreme Court of New Brunswick (1) confirming the levy of school rates on appellant's property.

The only question raised on the appeal was whether or not the valuation on the appellant's property fixed by the contract mentioned in the head-note at $100,000 should be the valuation for school rates. The judgment appealed against held that it should not and that the assessment was properly made on the real value.

Teed K.C. and *Stevens K.C.* for the appellant.

Lafleur K.C. and *Baxter K.C.* (*Cormier* with them) for the respondents.

*PRESENT :—Sir Louis Davies C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 46 N.B. Rep. 506.

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THE CHIEF JUSTICE.—I concur with my brother Anglin.

IDINGTON J.—This is an appeal from a judgment of the Appellate Division of the Supreme Court of New Brunswick whereby it was decided that the appellant was not entitled to claim, under and by virtue of legislation fixing a reduced basis of valuation of its property for the purposes of assessment "for rates and taxes within said town" of Edmundston, that such legislation extended to and necessarily determined the valuation basis for rates and taxes imposed by and through the legal machinery whereby respondent was entitled to have rates and taxes imposed for the support of the respondents' schools.

It is to be observed that there are three distinct corporate entities in each county entitled to levy rates and taxes within said town.

The town corporation is one; the county is another; and the Board of School Trustees of the District is a third.

The respondent in this case had jurisdiction over the town and part of the adjacent parish forming a school district known as School District Number 1.

The county corporation embraced both and much more.

And a very curious feature of the legislation now in question is that by section four of the first Act passed to carry out the purposes of the promoters thereof, it was expressly provided as follows:—

4. In any valuation of the property and income of the said town of Edmundston for county purposes hereinafter to be made, during the period of twenty-five years in which this Act is made to apply, the total valuation of the real and personal property, lands, tenements and hereditaments and capital stock and income of the said Fraser, Limited, shall not exceed the sum fixed by paragraph one of this Act until fixed

by said town council under paragraph two of this Act, from and after which time said valuation shall be the amount so fixed by said town council.

Why, if the same rule was supposed to apply to every rate or tax levied in the town no matter for what purpose, was this express provision made as against the county and not a word said as against the school rates or respondents' right to levy therefor.

I can only infer that it was because the promoters of the legislation well knew that the settled policy of the legislature was, as the learned Chief Justice below states, against such obviously unjust exemptions.

The trifling amount the county would lose, or fail to reap, by the fixing of this assessment basis would hardly be worth contesting.

The increased expenses of the administration of county affairs likely to flow from the establishment of such an industry as the appellant's would be but a drop in the bucket.

On the other hand the probable increase of school expenses, if appellant's enterprise turned out successful, would be sensibly felt.

And the maxim so often applied, *expressio unius est exclusio alterius*, seems to me applicable to this piece of legislation, which doubtless was a legislative expression of a contract between appellant and the town in process of formation.

It was followed by another Act validating the actual contract which resulted and that validating Act provided as follows:—

3. So much of the said Act, 2 George V, chapter 104 as is inconsistent with the provisions of this Act is hereby repealed.

The suggestion made by counsel for appellant that in many similar Acts, through abundant caution, the words "saving and excepting school rates or taxes,"

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or the like expression, was used, does not carry with me much weight when I bear in mind that, though pressed to do so, he could not point to a single instance, of the many he cited, wherein provision was made in such cases for providing the machinery for carrying out such exception but, on the contrary, the ordinary provision of the school Acts for effecting such purpose was apparently thought to be all that was necessary. If in such cases that legal machinery given school boards for effectually levying their rates, can be carried out notwithstanding the basis of the levy being alleged to be the town assessors' valuation then surely it can be done equally well when as here we have the legal presumption held to be on the construction of the Act that school rates are in law excepted from the operation of the Act.

I think the other questions raised in argument are so effectually dealt with by the judgment of the learned Chief Justice, with which I agree, that I need not repeat his reasons here.

I would therefore dismiss this appeal with costs.

DUFF J.—It is a settled principle that legislation intended to carry into effect contractual arrangements between local authorities and individuals shall not, unless the language is too clear to admit of a doubt, be construed as having collateral effects touching interests outside of those which, as being the interests of the parties immediately concerned, the legislature may be supposed to have had exclusively in view. That principle applies in this case.

The appeal should be dismissed with costs.

ANGLIN J.—I am of the opinion that the appellant company is not entitled to have its assessment for

purposes of school taxation limited as provided for by the New Brunswick statute, 2 Geo. V, c. 104, and the agreement of 1917, confirmed by the Act, 8 Geo. V, c. 65.

The town of Edmundston has not exercised the power, conferred by section 108 of the Schools Act (C.S.N.B., 1903, c. 50), to bring itself under the provisions of section 105 of that statute. Section 111 therefore does not apply to School District No. 1, of which the town of Edmundston forms a part. That is made reasonably clear by the collocation of section 111 and the presence in it of the words

> rates ordered to be levied by the city or town council in accordance with the requisition of the Board of School Trustees or otherwise under the provisions of this Act.

As stated by counsel for the respondents in their factum, the words of section 111 just quoted

> distinctly refer to the provisions of s. 105 (12) and (13), which have no counterpart in ss. 76 to 79, which alone are applicable to School District No. 1 of the Parish of Madawaska.

The valuation dealt with by the two statutes cited is of property liable

> for assessment for rates and taxes within such town.

No provision is made for the assessment of property of the appellant situate outside the town but within the school district. *Primâ facie* these two statutes deal with assessment for taxes and rates for town purposes only. The Board of School Trustees was not privy to the passing of this legislation and it is not a party to the agreement between the appellant and the town of Edmundston confirmed by the latter Act. It is most improbable that the legislature would pass legislation intended to affect the interests of the schools of the district adversely in a matter so important and to such an extent without at least notifying the school

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board and giving it an opportunity to protest against the interests committed to its charge being thus injured. At all events an intention so to act should not be imputed to the legislature unless the legislation in explicit and unmistakable terms puts its existence beyond question. I find no such terms in either statute. On the contrary both Acts, as I read them, purport to deal only with the interests of the parties who were before the legislature seeking them—Frasers, Limited and the town of Edmundston.

I agree with the learned Chief Justice of New Brunswick that the assessors pursued a proper and a reasonable course in first placing on the property of the appellant its actual or true valuation (in this case $1,000,000) and appending thereto the statement.

net assessment as per contract with the town of Edmundston to be reduced to ($100,000) one hundred thousand dollars.

The appeal on this—the main subject of it—fails and should be dismissed as against the school trustees.

Two minor questions affecting the town of Edmundston, though referred to in the appellant's factum, were not pressed at bar. It is therefore thought better to reserve the rights of the appellant as to them in the hope that the parties may reach an agreement which will render disposition of them unnecessary.

BRODEUR J.—The question in this case is whether or not the limit of valuation for municipal assessment would include school taxes.

By a statute passed in 1912 the legislature of New Brunswick declared that, in view of the contemplated establishment by the appellants of a large industrial concern within the town of Edmundston, the valuation

of their real and personal property for twenty-five years should not exceed $200,000.

This legislation was to come into force when the Lieutenant Governor in Council was satisfied that the sum of $250,000 on capital account had been expended.

Nothing was done under the provisions of this Act.

In December, 1916, a contract was made between the appellants and the town of Edmundston dealing with different objects, viz., the sale by the town to the company of electrical energy, the supply of water, the taking of some earth material required by the company for construction purposes and containing the following:

9. The valuation for assessment purposes as provided for under chapter 104 of 2 George V, of the Acts of the legislature of the province of New Brunswick shall be fixed at the sum of $100,000.

It was provided by this contract that the necessary legislation to confirm the agreement should be obtained by the town.

At the session of the legislature of 1917 an Act was passed to confirm this contract between the appellants and the town of Edmundston and to amend the Act of 1912; and section 2 declared:

Section 9 of the said contract shall come into force and effect and be binding upon the said town of Edmundston and the said Fraser when a sum of $250,000 would have been expended and when a proclamation would be issued by the Lieutenant Governor in Council.

The appellants made the necessary expenditure and the proclamation was issued in March, 1918.

Is this legislation binding for school purposes?

If we had to deal with the legislation of 1912 which was somewhat general in its character the decision of this court in *Canadian Pacific Railway Co.* v. *Winnipeg*, (1) could not perhaps be easily distinguished from it.

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It was held in that case that the exemption from all municipal taxes, rates and levies and assessments of every nature and kind would include school taxes. It should be remembered, however, that in the province of Manitoba where this case of *Canadian Pacific Railway Co.* v. *Winnipeg*, (1) arose, the city had to levy and collect not only the municipal but likewise the school taxes. The school trustees of the city had no power to levy taxes for school purposes.

In the province of New Brunswick the taxes are levied and collected by the school trustees; and the legislature, in confirming a contract between the town of Edmundston and the appellants by which the assessment for town purposes was to be limited to $100,000, would not be supposed to intend to restrict the powers of the school corporation. We might consult on this point the case of *Osment* v. *Town of Indian Head.* (2), where it was held that an exemption from general municipal taxation does not include school taxes under the municipal ordinance.

I am of opinion that the confirmation of this contract is binding, as declared by section 2 thereof, on the corporation of Edmundston and the appellants only, and not on the school trustees.

The judgment *a quo* which dismissed the appellants' contention should be confirmed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Stevens & Lawson.*
Solicitor for the respondents: *Max D. Cormier.*

(1) 30 Can. S.C.R. 558. (2) 7 Terr. L. R. 462.