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THE NOVA SCOTIA CAR WORKS (DEFENDANTS) ..... APPELLANTS;

AND

THE CITY OF HALIFAX (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Municipal corporation—Exemption of industry from taxation—Special assessment—Local improvement.

By agreement with the city of Halifax, sanctioned by an Act of the legislature, a company doing business in the city was granted, for a certain period, "a total exemption from taxation" except for water rates.

Held, reversing the judgment of the Supreme Court of Nova Scotia (45 N.S. Rep. 552) Fitzpatrick C.J. dissenting, that a special assessment for a proportionate part of the cost of a public sewer, claimed to be chargeable against the lands of the company was "taxation" within the meaning of said agreement and the company was exempt from liability therefor.

APPEAL from a decision of the Supreme Court of Nova Scotia(1) in favour of the respondent on a stated case.

The case stated for the opinion of the Supreme Court of Nova Scotia was as follows:—

1. The plaintiff is the City of Halifax, a corporation under the Halifax City Charter.

2. The Silliker Car Company, hereinafter called the "Silliker Company," was duly incorporated under

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

(1) 45 N.S. Rep. 552.

the provisions of the "Nova Scotia Companies' Act" on the 4th day of April, A.D. 1907.

3. Section 4 of chapter 70 of the Acts of 1907, entitled "An Act to authorize the City of Halifax to assist the Silliker Car Company, Limited," is as follows:—

"The exemption from taxation of the property of the said company set out in the said Memorandum of Agreement is hereby confirmed."

4. The Memorandum of Agreement, referred to in said section 4 of chapter 70 of the Acts of 1907, was printed as a schedule to said Act, and clause I. thereof is as follows:—

"I. The city will grant the company a total exemption from taxation for ten years on its buildings, plant and stock, and on the land on which its buildings used for manufacturing purposes are situated, or immediately connected with the same, and used exclusively for the purposes of its business, such lands to be practically in one block, but may be divided by a street, and not to exceed twenty acres in all. In addition to these lands the company may hold, for the purposes of its business, and upon the same terms, a lot of land on the water front north of the Intercolonial Round House, Richmond, and not exceeding five acres, provided no tolls or wharfage are charged in connection therewith. At the expiry of the ten years the city agrees that the total yearly value for assessment on such lands, buildings, plant and stock shall, for a further period of ten years, not exceed fifty thousand ($50,000) dollars, the foregoing exemption not to apply to the ordinary water rate for fire protection, nor to the rate for water used by the company, which shall be charged at the minimum rate charged other manufacturing concerns."

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

5. The lands formerly owned by the Silliker Company and used exclusively for manufacturing purposes are practically in one block of less than twenty acres in extent and are situate in the northwest suburbs of the City of Halifax, bounded generally on the south by North street, on the west by Windsor street, on the north by Almon street and on the east in part by Clifton street and in part by the rear line of lots fronting on said Clifton street, and were acquired by and conveyed to the Silliker Company on the ninth day of May, A.D. 1907.

6. The defendant, the Nova Scotia Car Works, Limited, is a body corporate duly incorporated in February, 1911, under the provisions of the said "Nova Scotia Companies Act" with the object, among others, of acquiring and undertaking the whole or any part of the business, good will, property, franchises, rights, privileges, assets and liabilities of the said Silliker Company.

7. The defendant purchased and acquired all the property of every kind, real, personal and mixed, of the Silliker Company and assumed its liabilities, and the real property of the Silliker Company, including the said lands used exclusively for manufacturing purposes, mentioned and described in paragraph five hereof, were on the twenty-fifth day of April, A.D. 1911, conveyed to and the title thereof vested in the defendant.

8. The said lands since their acquisition by the Silliker Company have always been and still are used continuously and exclusively for manufacturing purposes either by the Silliker Company or the defendant.

9. In 1911 an Act, chapter 41 of the Acts of that year, was passed, dealing with the exemptions from

taxation of the Silliker Company and the defendant. The said Act is to be deemed a part of this case and incorporated therewith.

10. In the year 1908 the City of Halifax constructed public sewers along North, Windsor and Almon streets, opposite the lands mentioned and described in paragraph five hereof, and in 1910 and 1911 the City of Halifax constructed a public sewer along Clifton street opposite the said lands.

11. The proportion of the cost of construction of such sewers along North, Windsor and Almon streets claimed by the plaintiff to be chargeable, by and under the provisions of the Halifax City Charter, against said lands mentioned and described in said paragraph five hereof is two thousand and sixty-seven dollars and thirty-four cents ($2,067.34); and the proportion of the cost of construction of such sewer along Clifton street claimed by the plaintiff to be chargeable as aforesaid against the said lands is three hundred and twenty dollars ($320); and making in all the sum of $2,387.34.

12. The sewers on North, Windsor and Almon streets were completed during the year 1908, and the sewer on Clifton street was completed in 1910, the plans of North, Windsor and Almon streets with the list of owners of each property fronting on said streets were duly prepared and filed by the city engineer of the City of Halifax in his office in accordance with the provisions of section 602 of the Halifax City Charter on the 26th day of March, A.D. 1908, and the plans of said Clifton street together with the list of the owners thereon were duly filed by said city engineer in his office on the 30th day of March, A.D. 1911.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

13. The plaintiff claims that the said proportions of the cost of constructing the said sewers constitute a lien on the said lands of the defendant, under and by virtue of the provisions of the Halifax City Charter, and thereby enforceable against the said lands and the defendant company.

14. The defendant claims that the said lands are exempt from liability from such lien by reason of the said Acts, chapter 70 of 1907 and chapter 41 of 1911.

15. The question for the court is, does the exemption claimed by the defendant apply in respect to the sewers herein referred to ?

16. If the court is of the opinion that the lien exists in respect to the sewers herein referred to, the plaintiff is to be at liberty to enter judgment against the defendant for the sum of two thousand three hundred and eighty-seven dollars and thirty-four cents ($2,387.34) with costs Such liberty, however, not to affect any other remedy which the plaintiff has or may have for enforcing such lien. If the court answers the said question in the negative, the plaintiff shall pay defendant the costs of this action, and defendant may enter judgment therefor when taxed.

This case is stated and agreed upon pursuant to Order 33, Rule 6, of the "Nova Scotia Judicature Act."

The judgment of the Supreme Court of Nova Scotia on the case so stated was that the assessment for the company's proportion of the cost of the sewer was not "taxation" from which the latter was exempt under the agreement. The company appealed to the Supreme Court of Canada.

E. P. Allison for the appellants. The respondent and the court below rely on the American decisions

holding that exemption from taxation does not include special assessment. These decisions do not apply to conditions in Canada. They are all based on the constitutional limitation in the 14th amendment and the provision in State constitutions that all taxation must be equal and uniform. See *Davidson* v. *City of New Orleans*(1); *Illinois Central Railroad Co.* v. *City of Decatur*(2); *Boston Seamen's Friend Soc.* v. *City of Boston*(3).

The decisions in *Chicago Great Western Railway Co.* v. *Kansas City North Western Railroad Co.* (4) shews the interpretation to be given to the word "taxation" in the absence of statutory or constitutional limitations.

Every contribution demanded by the State is a tax. *Per* Strong J. in *Les Ecclésiastiques de St. Sulpice* v. *City of Montreal*(5). And the decision of the court in that case should be decisive of this appeal.

F. H. Bell K.C. for the respondent cites *Armstrong* v. *Auger*(6); *Illinois Central Railroad Co.* v. *City of Decatur*(2); *Boston Asylum, etc.* v. *Street Commissioners of the City of Boston*(7).

THE CHIEF JUSTICE (dissenting).—Here is the apparently simple question in this case: Is the appellant, the Nova Scotia Car Co., exempt from liability to contribute to the cost of constructing certain sewers built by the respondent, the Corporation of the City of Halifax, under the provisions of the city charter?

(1) 96 U.S.R. 97.
(2) 147 U.S.R. 190.
(3) 116 Mass. 181.
(4) 75 Kan. 167; 12 Am. & Eng. Anntd. Cas. 588.
(5) 16 Can. S.C.R. 399.
(6) 21 O.R. 98.
(7) 180 Mass. 485.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

The Chief Justice.

For brevity I will refer to the appellant as the company, and to the respondent as the corporation.

By a Memorandum of Agreement made with the corporation and confirmed by the legislature, the Silliker Car Company was promised a total exemption from taxation for ten years on its buildings, plant and stock. The company has since (1911) acquired the property, privileges and franchises including the right to exemption from taxation of the Silliker Car Company and, by Act of the legislature (chapter 41 of the Acts of 1911) this agreement is also approved of. The sewers were completed in 1908-1910, and except for the agreement, the liability of the company for its share of the cost of their construction is admitted.

The exemption clause reads as follows:—

> The city will grant the company a *total exemption* from taxation for ten years on its buildings, plant and stock, and on the land on which its buildings used for manufacturing purposes are situated, or immediately connected with the same, and used exclusively for the purposes of its business, such lands to be practically in one block, but may be divided by a street, and not to exceed twenty acres in all. In addition to these lands the company may hold, for the purposes of its business, and upon the same terms, a lot of land on the water front north of the Intercolonial Round House, Richmond, and not exceeding five acres, provided no tolls or wharfage are charged in connection therewith. At the expiry of the ten years the city agrees that the total yearly value for the assessments on such lands, buildings, plant and stock shall, for a further period of ten years, not exceed fifty thousand ($50,000) dollars, the foregoing exemption not to apply to the ordinary water rate for fire protection, nor to the rate for water used by the company, which shall be charged at the minimum rate charged other manufacturing concerns.

After some general provisions authorizing the construction and maintenance of sewers, the city charter prescribes the liability of owners of property adjoining them. The important section is No. 600, which is in these words:—

(1) Whenever any public sewer is built in any street every owner of any real property on either side of the street, fronting on such sewer in the manner provided in the next succeeding section, *shall be liable to pay to the city towards the construction of such sewer*, the sum of one dollar and twenty-five cents for each lineal foot of his property so fronting.

(2) The remainder of the cost of such construction *shall be borne by the city.*

Section 605 defines what properties shall be considered as fronting on a sewer and liable to contribute to its cost.

Sections 602 and 603 provide for a filing by the city engineer on the completion of the sewer of a plan of the properties liable, which is made conclusive evidence of

the liability of every person named therein in respect to the property of which he is therein stated to be the owner,

and which amount is constituted a lien. This liability and lien may be

collected and enforced in the same manner and with the like remedies as by the charter are provided in respect to the rates and taxes of the city.

Finally section 605 enacts that the city collector shall retain from the proceeds of the sale of any property *for rates and taxes* the amount due in respect to such land for the construction of any *public sewer or private drain.*

The language of these sections would appear to differentiate clearly between municipal rates and taxes for which the general body of the ratepayers is liable, and the obligation to contribute to the cost of sewers and private drains imposed by the legislature on those whose property is specially benefited. And there lies, in my opinion, the crux of this case. Can that distinction be successfully made, and if it exists, what is the effect of it on the claim to exemption ?

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

The Chief Justice.

The sewer in question was, no doubt, like all sewers in a city, to some extent a public necessity as well as a private advantage to the owners of property fronting on it, and, therefore, the cost was distributed by section 600 of the charter between the general body of ratepayers and those immediately benefited.

In so far as the cost of construction bears upon the general body of the taxpayers, because the sewers meet a public necessity, one might say that the company would be exempt; — it is unnecessary, however, to decide that now, — but there is no reason to assume that it was the intention, notwithstanding section 362 referred to later, to impose on the general body of ratepayers that portion of the cost which represents the contribution due by the frontagers on the assumption presumably that their property is increased in value by the construction of the sewer to an amount at least equal to the sum they are required to pay.

I fail to see — and I say it with all deference — how it is possible to hold that the liability imposed by the legislature on the adjoining owner to pay $1.25 for each lineal foot of his property which fronts on the sewer can be called a tax within the meaning of that word in the exemption clause. It is, of course, a burden imposed by the legislative power upon property, to raise money for a purpose public in one aspect, but private in so far as it specially benefits the property of those called upon to contribute, and in so far as it effects that private purpose, can it be said to be a tax ? The obligation to pay does not arise under a city by-law or ordinance and there is no rating or assessment. To "assess" means to consider and determine the whole amount necessary to be raised by rate (Lord Esher, in *Mogg* v. *Clark*(1)). There is

(1) 16 Q.B.D. 79, at p. 82.

not even ratability dependent upon the extent of the benefit derived by the property. If it fronts on the sewer under the terms of section 601, the liability is absolute. In that view, and bearing in mind that taxation is the rule, and exemption the exception, can it be fairly said that, when the agreement authorizing the city to give the company total exemption from taxation for ten years was approved of by the legislature, it was intended that such exemption would include this special contribution to the city towards the construction of the sewer? Such a contention is so inequitable that it must be irresistible to be accepted. Where the legislature exempts any description of property from contributing to the local requirements, it is simply increasing the taxation on the other ratepayers, and such an intention is not to be lightly assumed. The provision in section 362(3) of the city charter that nothing contained in the charter itself shall be construed "to exempt any company, firm or individual from liability for paying any street enlarging, any sidewalk, constructing any sewer, or other betterment" cannot be easily conciliated with any such intention.

Further, it must be now considered as established that nothing but an express legislative exemption from rates can authorize that exemption. The exemption must be expressed, none can be implied, and if there be any doubt that interpretation will be adopted which least tends to impose unequal public burthens. (2 M. & G. 134-165; 11 East 675-785.) To repeat myself, I cannot find in the agreement an expressed intention on the part of the corporation to exempt the company from the special contribution imposed by the legislature on all frontagers as well as from the burden of ordinary municipal taxation.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

The Chief Justice.

It was argued here that the proviso in relation to the fire protection rate and the rate for water used by the company is in the nature of an exemption and excludes all other exceptions or impositions of a similar nature from the exemption. I think the proviso was inserted probably *ex majori cautelâ* under the idea that the provisions of the Act might possibly otherwise include the subject-matter of the proviso. As pointed out in respondent's factum there are, in addition, substantial reasons why the proviso was usefully inserted and full effect can be given to it without stretching it in the extraordinary manner contended for. The water rates of the City of Halifax are made up of two distinct parts. There is first a fire protection rate, imposed upon all real property in the city, occupied or unoccupied, and rated upon the assessed values, and, therefore, in form at least analogous to the general rates and taxes, and is dealt with in the part of the charter dealing with taxation, and it was only a reasonable measure of precaution to provide that these should not be included in the exception. There is also the consumption rate, now based, in the case of manufacturing concerns, entirely on the consumption as shewn by meters. These rates vary in amount, and the second part of the saving clause is really an agreement on the part of the city, in addition to the exemption from taxation, to give the company the benefit of its minimum rates. The exception in the agreement of the ordinary water rate for fire protection and of the rate for water used by the company confirms me in the conviction that the exemption was limited to rates imposed for the general purposes of the city and does not include such charges as are incurred for some special service given for the particular benefit of the individual ratepayer.

That exemption from taxation does not include betterment charges, has been definitively decided by the Supreme Court of the United States in two very carefully considered judgments, in both of which it was held that an exemption from taxation is to be taken as an exemption simply from the burden of ordinary taxes, taxes proper, and does not relieve from the obligation to pay special assessments: *Illinois Central Railroad Co.* v. *City of Decatur*(1); *Ford* v. *Delta and Pine Land Co.*(2).

These cases go much further than it is necessary to go in this case. Here there is neither an ordinary tax nor a special assessment. These decisions are not, it is quite true, authorities in our courts, but as Lord Herschell said, in *Gas Float Whitton* (No. 2), (1897) (3):—

> The opinions and reasoning of the learned judges of courts in the United States have always been regarded with respectful consideration and have often afforded valuable assistance.

I distinguish this case from *Les Ecclésiastiques de St. Sulpice* v. *City of Montreal*(4), upon which so much reliance was placed here. The exemption in that case, as Strong J. said, was made to turn on the single point whether the assessment or charge in respect of a contribution to the drain was or was not "a municipal assessment," and he held that the Seminary was undoubtedly assessed by the city in respect of the contribution and, therefore, came within the terms of the exemption enactment. In that case the by-law provides that the cost of the sewer is to be borne and paid by the owners of real estate on each side of the street *by means of a special assessment to be made and*

(1) 147 U.S.R. 190.
(2) 164 U.S.R. 662, at p. 670.
(3) 66 L.J. Ad. 102.
(4) 16 Can. S.C.R. 399.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

The Chief Justice.

levied upon the owners of real estate, and it was to cover that *special assessment* that the suit was brought. No reference is made to the point on which this case was decided below, namely, that the assessment was not imposed for the general purposes of the city, but for one particular purpose only, except possibly by Fournier, J., who says, in *Les Ecclésiastiques de St. Sulpice* v. *City of Montreal*(1) :—

> La distinction que fait l'intimée entre les taxes ordinaires et annuelles aurait pu être soutenable en vertu de la sec. 3 de l'acte 38 Vict. — où ces expressions paraissent avoir été ajoutées dans le but de limiter les effets d'exemptions. Les *cotisations spéciales* pour fins purement locales pourraient être distinguées *des taxes ordinaires et annuelles*, si la question était soulevée ici à propos d'institutions de charité mentionnées dans la sec. 3, et si elle devait être décidée d'après cette loi. La sec. 26 qui doit servir de règle pour la décision de cette question ne fait aucune distinction quelconque entre les taxes ou spéciales ou générales, elle se sert dans son sens le plus large des mots cotisations municipales, en ajoutant quelque soit l'acte ou charte en vertu duquel elles soient imposées. Il me semble qu'il est tout à fait impossible de trouver dans ces expressions la possibilité de faire la distinction que l'intimée essaie de faire prévaloir. Les termes employés sont d'une généralité si complete et si absolue qu'il n'y a pas à se méprendre sur leur signification — "toutes cotisations municipales" — comprends toutes cotisations municipales quelqu'en soient la nature.

That judgment is not an authority on the point raised here.

It is worth mention that the Chief Justice, who was with the majority in *Wylie* v. *City of Montreal* (2), dissented in this case.

As to the effect of the remarks of the Privy Council on refusing leave to appeal, I trust I may be permitted to call attention to the following points:—

The court was evidently speaking only with reference to the Quebec statutes and their Lordships did not even refer to the provisions of the Montreal char-

(1) 16 Can. S.C.R. 399, at p. 406. (2) 12 Can. S.C.R. 384.

ter which they expressly state had not been laid before them. Consequently they were apparently under the impression that the sewer charges were rates in the same way as the yearly rates and taxes, and were described as rates or taxes, and that the only distinction between them and the ordinary taxes was that the former were local in application and the latter general. A case such as the present was apparently not in their minds, and the English system of municipal taxation is so different from that which prevails in the United States and Canada that such a case as this would not naturally present itself to them. Further, the reasons given in refusing leave to appeal are not equivalent to a judgment on the main question but only reasons why it was not so abundantly clear that the judgment below was so wrong as to induce the court to allow a further appeal. This is particularly clear from the last paragraph of the judgment in which their Lordships expressly leave open, and almost invite, a direct appeal on the question involved, which they would hardly have done if they had intended their remarks to indicate a definite opinion. Since the Montreal case this question has been much discussed in the United States. It is most probable that the Privy Council would not to-day wish its observations made on refusing leave to appeal to be viewed as a direct disagreement with the unanimous judgment of the Supreme Court of the United States reaffirmed on further consideration and concurred in by the practically unanimous judgment of the State courts, especially on a matter with which the American courts have such ample experience, and the English none.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

Idington J.

IDINGTON J.—This appeal turns upon the interpretation of a sentence in a contract between the parties concerned, which reads as follows:—

> 1. The city will grant the company a total exemption from taxation for ten years on its buildings, plant and stock, and on the land on which its buildings used for manufacturing purposes are situated, or immediately connected with the same, and used exclusively for the purposes of its business, such lands to be practically in one block, but may be divided by a street, and not to exceed twenty acres in all.

This was confirmed by the legislature enacting thus:—

> 4. The exemption from taxation of the property of the said company set out in the Memorandum of Agreement is hereby confirmed.

A tax is attempted to be imposed notwithstanding this comprehensive language upon appellant and its lands thus exempted to enforce a contribution in aid of the construction of a sewer.

It is attempted to be supported by references to a line of American authorities which cannot bind us. These authorities are the result partly of a development of constitutional limitations relative to taxation and partly of other causes unnecessary to dwell upon, and hence possess no weight here.

Then, again, it is urged that the contract must be limited by the use of the word "taxation" in the respondent's charter.

Even if the charter is to be taken as a guide I see no justification therein for the perversion of such express language as quoted above. Besides it would be slightly inconvenient for the people in the rest of Canada, where similar contracts are very numerous, to have a declaration of this court that such plain ordinary language in a contract for exemption from taxation is to be read in light of what the respondent's charter contains or any other charter might contain.

If the respondent had desired such or any other limitation it should have expressed it in the contract.

Indeed, it has expressly made exception therein relative to water rates for fire protection and rates for water used by the company and shewn thereby what limitations it desired to have inserted.

The former like levies for sewer construction is by respondent's charter made a local rate affecting properties within a certain distance from water-pipe lines, and the latter though in truth supposed to be for a service and thus probably distinguishable from the ordinary notion of a tax is yet made collectable as if a tax or rate.

So carefully was the contract framed in these regards that one would have supposed anything else having the like semblance to taxation should, if desired, have been provided against.

The language used is plain and so clear and comprehensive and given by the statute such effect that it thereby overrides anything in the city charter, which ingenuity might suggest as in conflict with the right appellant asserts.

The charter itself has express provision that specific exemptions made therein are not to extend to taxes of this kind.

And if the aldermen, when they came to frame a contract with strangers, knew the terms of the charter so well as counsel seeks to persuade us they must have known them, I submit, they would have followed the example in that instrument and put a like provision in this contract; if in truth such was their purpose, which I gravely doubt. It is more probable that sewers were not expected by these staid gentlemen to come into fashion for ten years in the district chosen for the factory site in question.

The appeal should be allowed with costs here and

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

Duff J.

in the court below and judgment be entered accordingly pursuant to the terms of the stated case.

DUFF J.—By an agreement entered into between the appellant company and the respondent corporation it was provided that the company should enjoy "a total exemption from taxation" in respect of certain lands, for a specified period, and it was further stipulated that this exemption was "not to apply to the ordinary water rate for fire protection nor to the rate for water used by the company," and this agreement was confirmed by an Act of the Legislature of Nova Scotia. In the year 1908 the corporation constructed a public sewer along Clifton street opposite the lands which were the subject of the agreement. By section 600 of the charter of the corporation it is provided that

> whenever a public sewer is constructed in any street in the city owners of real property fronting on such sewer are liable to pay to the corporation towards such construction the sum of $1.25 for each foot of such property.

By another provision of the charter the payment of this sum is made a charge upon such property. The Supreme Court of Nova Scotia has held that this impost is not a tax within the contemplation of the agreement and consequently that the "total exemption from taxation" provided for thereby does not relieve the appellant company from liability to pay it, and the corporation appeals. With great respect I am unable to agree with the opinion of the court below. The ground upon which the judgment appears to proceed is this: The payment exacted by section 600 of the corporation's charter is, it is said, in the nature of a contribution for services done by the corporation in constructing a work which constitutes an improvement or better-

ment in respect of the property charged with the payment; and this sort of contribution, it is said, is not within the purview of the agreement. I do not think there is any principle upon which the plain language of the agreement can be thus restricted. It was not, I think, seriously argued that the contribution required by section 600 is not a "tax" within the ordinary meaning of the word. On that point at all events it appears to me that the judgment of Mr. Justice Strong in *Ecclésiastiques de St. Sulpice* v. *City of Montréal*(1), and the reasoning of Lord Watson published in the same volume at page 409 are conclusive. As Lord Watson says, powers to execute such works as sewers

> are entrusted to municipal bodies, presumably in the interest of the public, and not for the interest of private owners, although the latter may be benefited by their exercise. *Primâ facie*, their Lordships see no reason to suppose that rates levied for improvement of that kind are not municipal taxes.

The fact that the sum levied upon each proprietor is fixed according to the length of the frontage of his property instead of varying with the assessed value of it can make no possible difference; nor can it matter in the least that the payment is required and the amount of it fixed by a specific provision of the corporation charter instead of being left to the discretion of the governing body of the municipality.

There are, moreover, two circumstances which appear to me to lend very substantial support to the view that the phrase "total exemption from taxation" is not in this agreement used in the restricted sense contended for by the corporation:—

1. The stipulation that the exemption is not to apply to the ordinary water-rate for fire protection nor to the rate for water used by the company clearly

(1) 16 Can. S.C.R. 399.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

Duff J.

indicates, in my opinion, that sums levied as special rates for services which municipalities ordinarily perform were not regarded as necessarily excluded from the exemption the agreement has provided for. This principle of construction has been acted upon frequently in agreements relating to taxes; see *Haslett* v. *Sharman*(1), at page 439.

2. In the charter of the corporation itself sections 335, 341, 362-3 indicate that a statutory exemption from taxation was regarded by the legislature as *primâ facie* extending to such contributions.

Counsel for the respondent rested largely upon certain decisions of the Supreme Court of the United States. The decisions of that court are, of course, entitled to the highest respect; but I think we should be going altogether too far if we should accept them as necessarily conclusive upon the meaning of a not uncommon English phrase used in a contract made in this country and especially when they are in conflict with opinions expressed by the Privy Council and by this court as to the normal effect of such words.

ANGLIN J.—The matter for determination in this action is the proper interpretation of an exemption clause in an agreement between a municipal corporation and an industrial company. The question is whether a sewer rate of $1.25 per foot frontage imposed on the appellant company, under the authority of section 600 of the charter of the City of Halifax, is taxation, within the meaning of that word as used in the provision of the agreement whereby the city assured to the Silliker Company (whose rights and privileges are now vested in and enjoyed by the appellant, 2 Geo. V. (N.S.), ch. 41)—

(1) [1901] 2 K.B. Ir. 433.

a total exemption from taxation for ten years on its buildings, plant and stock and on the land on which its buildings used for manufacturing purposes are situate.

The rate in question is what is generally known as a local improvement or betterment rate. In considering whether such a rate should be included in a "total exemption from taxation," we are not embarrassed by the difficulty which affects many of the American courts in dealing with similar questions, namely, that, because of a constitutional provision that taxation must be uniform and equal and levied in proportion to the value of the property taxed, local improvement rates, especially when imposed as a fixed charge per foot of frontage on the improvement, are not deemed to be covered by the word "taxation" unless the context makes such a construction of it practically inevitable. For that reason most of the American cases in which it has been held that local improvement rates do not fall within a general exemption from taxation were so decided. The American courts have, however, recognized a difference between exemptions provided for in what are called general tax Acts and those granted by special agreements, or by private Acts of the legislature, such as we are now dealing with. The constitutional difficulty is not deemed so formidable in this latter class of cases.

As put by Mr. Justice Brewer, in delivering the judgment of the United States Supreme Court, in *Illinois Central Railroad Co.* v. *City of Decatur* (1), at page 203:—

It is said that it is within the competency of the legislature, having full control over the matter of general taxation and special assessment, to exempt any particular property from the burden of both, and that it is not the province of the courts, when such entire

(1) 147 U.S.R. 190.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

Anglin J.

exemption has been made, to attempt to limit or qualify it upon their own ideas of natural justice. * * * This is undoubtedly true. So we turn to the language employed in granting this exemption to see what the legislature intended.

I find nothing in the agreement (which was confirmed by 7 Edw. VII. (N.S.), ch. 70, sec. 4), to restrict the application of the word taxation. On the contrary the express exception from the exemption of "the ordinary water rate for fire protection" and of "the rate for water used by the company" rather indicates that the word "taxation" is employed in its most extended meaning — a meaning wide enough to include even a rate imposed as a payment for water actually consumed by the company. The word "total" by which the exemption is qualified implies an intention to relieve from every charge in the nature of a tax, however imposed. There is, in my opinion, no substantial distinction between this case and *Les Ecclésiastiques de St. Sulpice de Montréal* v. *The City of Montreal*(1), where it was held that an exemption

from municipal and school assessments whatever may be the Act in virtue of which such assessments are imposed and notwithstanding all dispositions to the contrary.

included exemption from a local improvement rate levied for sewer construction. The same view as to the effect of a general exemption from taxation was taken by the Court of Common Pleas of Upper Canada in *Haynes* v. *Copeland* (1868) (2). The reasoning of the learned judge who decided this case does not, however, impress me as convincing.

The argument of Wells J., in delivering the judgment of the Supreme Court of Massachusetts in *Harvard College* v. *Aldermen of Boston*(3), at pages 482-

(1) 16 Can. S.C.R. 399.
(2) 18 U.C.C.P. 150.
(3) 104 Mass. 470.

486, answers the contention that the rate here in question should not be deemed "taxation" within the meaning of that word in the exempting provision of the agreement because it is a special or local rate and is levied according to the frontage of the land abutting on the improvement and not according to its value. In *French* v. *Barber Asphalt Paving Co.*(1), at pages 343-4, the following passage from Mr. Dillon's work on Municipal Corporations is quoted by the court with approval:—

> The courts are very generally agreed that the authority to require the property specially benefited to bear the expense of local improvements is a branch of the taxing power or included within it. * * * Whether the expense of making such improvements shall be paid out of the general treasury or be assessed upon the abutting or other property specially benefited, and, if in the latter mode, whether the assessment shall be upon all property found to be benefited or alone upon the abutters, according to frontage or according to the area of their lots, is, according to the present weight of authority, considered to be a question of legislative expediency.

It is true that local improvement rates are declared by section 603 of the charter of the City of Halifax "to constitute a lien upon the land" benefited and that they are for some purposes to be regarded as incumbrances rather than as taxes. But, as is pointed out in the Ontario case cited by counsel for the respondent, which is one of a series of decisions where local improvement rates were so treated, they are, nevertheless, "charges in the nature of taxes." *Armstrong* v. *Auger*(2), at page 101.

With great respect for the Supreme Court of Nova Scotia, I am of the opinion that the imposition in question is taxation from which, under the terms of the agreement invoked by the appellants, they are entitled to be exempted.

(1) 181 U.S.R. 324. (2) 21 O.R. 98.

1913

NOVA SCOTIA CAR WORKS v. CITY OF HALIFAX.

Brodeur J.

The appeal should be allowed with costs here and below.

BRODEUR J.—I concur with Mr. Justice Anglin.

Appeal allowed with costs.

Solicitor for the appellants: *E. P. Allison.*
Solicitor for the respondent: *F. H. Bell.*