

Privy Council Appeal No. 105 of 1913.

The City of Halifax - - - - - *Appellants,*

v.

The Nova Scotia Car Works, Limited - - *Respondents.*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 4TH AUGUST 1914.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MOULTON.

LORD SUMNER.

[*Delivered by* LORD SUMNER.]

The respondents own a manufactory in Halifax, Nova Scotia, situated on four streets. In 1908, 1910 and 1911 the City of Halifax made public sewers in these streets under the City charter, and under its six hundredth section required the respondents, as owners of land and buildings fronting the sewers, to pay \$2387.34 towards the cost of their construction. If the respondents are in the position of an ordinary ratepayer, that sum is due and constitutes a lien on their lands under section 603 of the charter. The question is, in the words of paragraph 15 of the case stated for the opinion of the Supreme Court of Nova Scotia, "does

" the exemption claimed by the defendant
" apply in respect to the sewers," or, put
in another form, is this charge "taxation on
" the Company's buildings . . and on the land
" on which its buildings used for manufacturing
" purposes are situated?"

The Sillicker Car Company was incorporated in 1907. The Nova Scotia Car Works, Ltd., now respondents, are assignees of its manufactory and entitled to its rights and exemptions. For present purposes no distinction need be drawn between them. Both alike may be referred to as "the Company." The City of Halifax has power, under section 344 (1) of its charter, "when any company proposes to purchase any land or erect any building in the City of Halifax for the purpose of establishing any manufacturing industry," to "wholly or in part exempt the land and buildings . . of such company from taxation for the general purposes of the City other than water rates for a period not to exceed ten years from the establishment of such industry." The Company did propose to purchase land and erect buildings, but the City of Halifax was minded to do more than merely to apply this section, and an agreement was negotiated between the City and the Company, which, in the form of a schedule to a special Act, received legislative sanction on 25th April 1907. Under this agreement and the Act the City was to lend the Company \$125,000, to grant it an exemption from taxation for ten years, and to limit the yearly assessable value of its property during the second ten years to an agreed sum. As the consideration for this assistance the Company agreed to establish a manufactory in Halifax, and this has been done.

The actual terms of the exemption thus specially enacted are 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 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 dollars, the foregoing exemption
 “ not to apply to the ordinary water rate for fire pro-
 “ tection, nor to the rate for water used by the company,
 “ which shall be charged at the minimum rate charged
 “ other manufacturing concerns.”

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 the case of *La Cité de Montréal v. Les Ecclésiastiques du Séminaire de S. Sulpice de Montréal* (14 A.C. at p. 663) Lord Watson, speaking of an exemption from “municipal and school taxes,” or “cotisations municipales et scolaires,” says of a district rate for drainage improvements, “*primâ facie* their Lordships see no reason to suppose that rates levied for improvements of that kind are not municipal taxes.” It will be observed that this was a case of exempting a certain class of ratepaying bodies, namely educational institutions, on public grounds. Hence what Lord Watson says applies *a fortiori* in the present case of

a particular bargain. It is true that all that was decided by that judgment was that leave to appeal should not be given, but their Lordships had taken time to consider it, and this dictum, given in the course of it, is of great weight in the present case.

But apart from this their Lordships think that *primâ facie* the exemption covers the charge in question. Put shortly, the appellants' argument must be, this liability "to pay to the City towards the cost of construction of such sewer, the sum of one dollar and twenty-five cents for each lineal foot of property so fronting," is not "taxation on buildings or on the land" on which the buildings are situated. If it is not taxation, what else is it? No doubt other words may be found to describe it aptly, but the word "taxation" covers it too. Even in England, where the expression "rates and taxes" sometimes is used as if it connoted the distinction between national and local imposts, "tax" and "taxation" are words familiarly used in this connection. The Sewers Act, 1841, for example, authorises Commissioners of Sewers to levy a "general sewers tax" for construction and upkeep of sewers, and this tax is included with other taxes and with rates in the returns required by the Local Taxation Returns Acts, 1860 and 1870.

It is, therefore, incumbent upon the appellants to rebut this presumption, and to limit this exemption so that the liability in question will fall outside it. Three things are relied on—the nature of the charge, the terms of the charter, and the context of the clause.

In a sense it is true that the charge resembles the price of benefits conferred if not of work and labour done. The contribution

is kept down to \$1.25 per foot of frontage apparently to discriminate between the local benefit to property owners in the street and the general benefit to the City at large. This does not carry the matter far. All rates and taxes are supposed to be expended for the benefit of those who pay them and some really are so, but the essence of taxation is that it is imposed by superior authority without the taxpayer's consent, except in so far as representative government operates by the consent of the governed. Compulsion is an essential feature of the charge in question. The respondents might have drained their factory for themselves; they might think that it needed no drainage; they might object to the municipal scheme as defective; but the city sewers would be laid and the respondents would have to pay just the same. There is not enough here to differentiate this charge from "taxation."

What is relied on in the terms of the charter is that, alike in the headings of parts of the Act, in the arrangement of the sections themselves, and in the language employed, the charter seems to distinguish between "taxation," and the "execution of city works"; that "taxation" is a matter of valuation, assessment and rate books, and is subject to exemptions in favour of the Crown and of those who enjoy the benefit of grants of exemption from the City or exemption by special Act, while the execution of works of sewerage is treated as a specific City service, and is followed by an apportionment by the City engineer not by the assessors, which is in proportion to linear frontage and not based on annual value. Its cost is a capital and not a recurring charge, and the remedies given are to be pursued in the like manner as remedies for rates and taxes, as though the charge was not either a

rate or a tax, but only like them. Many sections were invoked as showing this contrast; they do show it and need not be enumerated here.

Their Lordships are by no means satisfied that criticism of this sort would suffice to rebut the *primâ facie* meaning of "taxation." The arrangement of the sections and the headings of the different parts of the Act are matters of orderly arrangement and convenience not directed to the present point but adopted *alio intuitu*. The charge is a capital instead of being a recurring charge, not because it is not a tax but because it is not a recurring tax; for a sewer, if once well laid, should last some considerable time. To say, that the charge may be enforced as taxes are enforced, is a condensed reference to procedure without necessarily meaning that the charge is not a tax but only something like it. There is, however, another short answer to this kind of reasoning. The agreement scheduled to the special Act does not expressly refer to the charter, nor is any such reference implied or involved. It provides for help to the Company much beyond what the charter provided for. It is really independent of the charter. The Company is not to pay any taxes at all; what does it matter, for the purpose of the exempting agreement, what powers the City has or when, or how, or in what terms they can be exercised? The Company has nothing to do with them; why should its privilege, for which it has given the agreed consideration, be limited by reference to powers and provisions, which cannot be used to its prejudice? Reference to the charter would only be necessary if the agreement had bound the Company to pay such taxes as the City might lawfully impose.

The third point turns on the latter words of the clause of exemption. Firstly, limiting the annual valuation to \$50,000 during the second ten years is supposed to show that the exemption during the first ten was merely such as might have been effected by saying that the annual valuation on which the Company should be taxed should be *nil*. Their Lordships can only say that this argument seems too shadowy to be of any service. In fact, the provision for the second ten years may not amount to an effective exemption at all. Secondly, the exemption is not to apply to ordinary water rates for fire protection or to the rates for water used by the Company. These words are quite consistent with a wide sense of "taxation." These two rates can only be taken out of the exemption by naming them. How does naming them show that the exempted taxation is *ejusdem generis* with water rates alone? If the exemption enjoyed by the Company had been only one which the charter empowered the City to grant by s. 344, or only that which is referred to in s. 335, it would by s. 362 (3) have stopped short of exempting it from charges for sewers or other betterments, but it is an exemption under a special Act, and the charter anticipates that such exemptions may occur, and provides *ex abundanti cautela* that among things wholly free from taxation shall be (s. 335 (1) (i)) "the property of any corporation exempted from civic taxation under any special Act as therein provided." Accordingly it is the provision in the special Act, that is in this case the clause in the agreement scheduled to the special Act, that must govern. That clause simply provides that the Company is to be exempt from taxation and is to pay water rates, not that it is to pay water rates but no other taxation.

Their Lordships are of opinion that these considerations do not, either singly or in the aggregate, meet the *primâ facie* meaning of the words of exemption, and that taken as they stand they cover the liability in dispute. They therefore think that the Supreme Court of Nova Scotia was wrong in answering the question, put in the case stated, in the negative, and that the order appealed from, namely, that of the Supreme Court of Canada which reversed that decision and answered the question in the affirmative, was right and should be affirmed. They will therefore humbly advise His Majesty that this Appeal should be dismissed with costs.

In the Privy Council.

THE CITY OF HALIFAX

v.

THE NOVA SCOTIA CAR WORKS,
LIMITED.

DELIVERED BY LORD SUMNER.

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