Privy Council Appeal No. 70 of 1915.

The Ontario Power Company of Niagara Falls *Appellants,*

v.

The Municipal Corporation of the Township of Stamford - - - - - - *Respondents.*

FROM

THE SUPREME COURT OF ONTARIO (APPELLATE DIVISION).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND FEBRUARY 1916.

Present at the Hearing.

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD SUMNER.

[*Delivered by* THE LORD CHANCELLOR.]

In this case the Ontario Power Company of Niagara Falls claims that its property within the Municipal Corporation of the township of Stamford should be assessed for the purpose of all rates at the sum, fixed and unalterable until 1924, of 100,000 dollars.

This claim depends entirely upon the meaning of a statute of the Legislative Assembly of the Province of Ontario, passed on the 25th of May 1905. But though the construction of this statute is the sole subject for their Lordships' consideration it is desirable to go back a short distance in history before stating and examining the words of the Act.

z [5] J 476 90—2/1916 E & S

It was stated to their Lordships in argument that since the year 1879 the Municipal Council of the Township of Stamford has been the sole body to possess the right to levy and collect taxes within the district. The school authority, although it fixes the sum required to be raised for school purposes, has no power either to levy or collect. It also appears that the municipal authorities of the township, from the year 1879 onwards, in order to develop and realise the resources and possibilities of the district, granted to industrial undertakings a preferential treatment with regard to their taxes. This practice was regulated by the Municipal Act of 1887, and was even further controlled in 1892 by two statutes passed in that year. The first of these later Acts was called the Consolidated Municipal Act, and it contains in section 366 the following provisions :—

"Every municipal council shall by a two-thirds vote "of the members thereof have the power of exempting "any manufacturing establishment or any waterworks or "water company, in whole or in part, from taxation, "except as to school taxes, for any period not longer "than ten years, and to renew this exemption for a "further period not exceeding ten years."

The other was the Public Schools Act of 1892, section 4 of which was in the following terms :—

"No municipal by-law hereafter passed for exempting "any portion of the rateable property of a municipality "from taxation in whole or in part shall be held or "construed to exempt such property from school rates of "any kind whatsoever."

The former of these acts was extended and re-enacted by the Consolidated Municipal Act of 1904; and this again provided that, in order to render a by-law of the municipality for granting a bonus in aid of any manufacturing industry a valid by-law, the assent of two-

thirds of all the ratepayers who were entitled to vote should be obtained; this provision being subject to certain qualifications, which are not necessary for the purpose of this case. In the same Act, the word "bonus" is defined as a total or partial exemption from municipal taxation, or the fixing of the assessment of any property for a term of years; and the general provisions of the statute contained this further condition—that nothing in the Act should authorise any exemption for a longer period than ten years, nor any exemption, either partial or total, from taxation for school purposes. The provisions of the Public Schools Act, 1892, were also re-enacted from time to time, the last of such statutes being passed in 1914.

In 1900 the appellant company obtained a licence from the Park Commissioners of the Queen Victoria Niagara Falls Park to construct and operate within the area under their control certain works necessary to enable the falls of the Niagara River to be utilised for the conversion of its energy into electrical or hydraulic power. It is not plain at what time the work under this licence was begun, but it was at least as early as 1902. In 1904 the company was contemplating the expenditure of considerable sums in the municipality of Stamford for the construction and equipment of the plant necessary for its undertaking. The establishment of such work within the municipality was, no doubt, a matter that would prove of considerable advantage to the locality; and the appellant company appears to have urged this before the municipality as a reason why it should receive consideration with regard to the assessable value of its property. Whether before the passing of the by-law any definite binding agreement was

ever come to between the parties is not established by the evidence before their Lordships, nor is it necessary for the determination of the present dispute. So far as the documents show what transpired, it would appear that the company formulated a request for considerate treatment, and that this request was granted by the municipal authority, who promised that all the real estate, property, franchise, and effects of the appellants, within their municipality, should be permanently fixed, for the purposes of assessing the taxation, at the sum of 100,000 dollars; accordingly, the municipality passed a by-law, which is known as By-law No. 11, and is stated to be a by-law relating to the assessment and taxation of the property of the appellant company. The by-law recited that it was expedient to grant the request of the company and enacted that the assessment should be fixed at 100,000 dollars apportioned as therein provided, that the assessment should last at this figure for every year between 1904–24,

" and that the said company and its property in the muni-
" cipality shall not be liable for any assessment or
" taxation of any nature or kind whatsoever beyond the
" amount to be ascertained in each such year by the
" application of the yearly rate levied by the Municipal
" Council in each such year to the said fixed assessment
" of $100,000, apportioned as aforesaid."

And it also enacted

" that this by-law shall come into full force and effect
" immediately after the municipality shall be authorised
" by sufficient legislative or other authority to pass the
" same."

This by-law appears to have been treated as a formal enacting provision of the municipality, was read a first, second and third time, and was finally passed on the 10th October 1904.

It is plain from consideration of the terms of the Consolidated Municipal Act of 1902, to which reference has been made, that this by-law

was outside the power of the municipality. They could not have passed any by-law granting a relief—partial or total—in respect of taxation, or fixed an arbitrary basis of assessment without a majority of two-thirds of the voters; and even with that majority they could not extend the period during which assessment should be fixed beyond the period of ten years; while finally, not only were they unable to grant exemption from the school rate, but the Public Schools Act, 1892, which was then in force, provided that any by-law that dealt with the question of exemption should be construed and held not to have excluded the school rate.

If, therefore, this by-law had been within the competence of the municipal authority, notwithstanding the general words which it contained, it would have been held and construed as meaning that from those general words exemption from liability to the school rate should be excluded.

In the following year, on the 25th May, 1905, the Statute was passed which has given rise to these proceedings. It is entitled "An "Act to Confirm By-law Number 11 of the Cor- "poration of the Township of Stamford." This Act after reciting the petition of the appellant company representing that by-law No. 11 of the municipal council should be confirmed and made legal and binding, in accordance with the intention and meaning thereof, contains in Section 1 the following passage:

> "By-law No. 11, of the Municipal Corporation of the "Township of Stamford, set forth as Schedule "A" to this "Act, is legalised, confirmed, and declared to be legal, "valid, and binding, notwithstanding anything in any Act "contained to the contrary."

By-law No. 11 is then scheduled to the Act.

Now, it is important to observe that the Act does not purport to confirm any agreement whatever between the parties; it purports only to legalise and make binding the by-law which was not legal and could not be made binding without statute, for the reasons that have been already set out.

The question on which this case depends is whether this statute confirms this by-law as a by-law subject to the interpretation to which such a by-law would be subject by virtue of the statute relating to public schools, or whether it confirmed it so as to enable its words to be read according to their general meaning and not in accordance with their statutory significance.

In their Lordships' opinion, the former is the true view of the case. The by-law did not attempt in express language to include the school rate among the rates for which exemption was granted. It did, indeed, use wide and sweeping terms to describe the exemption; but had any question arisen upon the construction of that by-law between its passage and the passage of the Act of Parliament by which it was confirmed, it would have been necessary to construe it so as to limit the general words to rates, other than the rate received for school purposes, and the school authority would have been entitled to rely on this as the true construction.

Their Lordships cannot think that the statute has altered this construction. It has enabled the by-law to be passed, it has confirmed the by-law and made it legal, but it still remains what it always purported to be—a by-law of the municipal authority carrying within it the meaning which the statute of 1892 had assigned.

It was strongly urged on behalf of the appellants that the words used in the Act meant the same as though a school rate had been expressly mentioned, and that, had the school rate been expressly mentioned, confirmation by the Legislature would necessarily have confirmed, as the Legislature had full power to do, a deviation from the ordinary statutory obligation. Their Lordships are not satisfied that this would have been the inevitable result, but assuming that it were, it does not follow that the same result ensues when other and general language has been used. It should be remembered that the Act in question was promoted by the appellant company. It lay in their hands to make plain that which they desired. It does not at all follow that if the by-law had contained express words relating to the school rate that it would have been accepted by the Legislature. Their Act must be assumed to confirm the by-law as it was drawn and with the meaning with which it was endowed; and speculation as to what might have happened had other words been used is unprofitable in an attempt to construe the actual language in which the Act was framed.

Their Lordships find that this view is in accordance with that expressed in the case of *Pringle* v. *City of Stratford* (20 O.L.R., 246), and, indeed, that case is far stronger than the present, for an actual agreement to grant exemption for a consideration subsequently executed was in that case confirmed by the special statute, and this fact appears to have greatly influenced Meredith, J.A., who delivered a a dissenting judgment.

For these reasons their Lordships will humbly advise His Majesty that this appeal be dismissed with costs.

In the Privy Council.

THE ONTARIO POWER COMPANY OF NIAGARA FALLS

v.

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF STAMFORD.

DELIVERED BY
THE LORD CHANCELLOR.

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