

Privy Council Appeal No. 102 of 1916.

**The Municipal Corporation of the Township
of Cornwall - - - - -** *Appellants,*

v.!

**The Ottawa and New York Railway Company
and others - - - - -** *Respondents,*

and

**The Attorney-General for the Province of
Ontario - - - - -** *Intervener,*

FROM

THE SUPREME COURT OF CANADA.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 1ST MAY, 1917.**

Present at the Hearing :

LORD BUCKMASTER.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
SIR WALTER PHILLIMORE, BART.

[Delivered by LORD PARMOOR.]

THIS is an appeal from a judgment of the Supreme Court of Canada confirming a judgment of the Supreme Court of Ontario. Special leave to appeal was granted by His Majesty in Council on the 18th August, 1916, the appellants undertaking not to raise on appeal the question that the Railway and Municipal Board of Ontario had no jurisdiction to hear the appeal direct from the Court of Revision or that the Appellate Division of the Supreme Court of Ontario, or the Supreme Court of Canada had no jurisdiction to entertain the appeals to these Courts. The question which was left open for the appellants to raise is, whether a railway bridge, which is described in the assessment as an international bridge between Canada and the United States of America, is assessable to municipal taxation, so far as it is situated within the Canadian boundary. The respondents raised in their case the further question whether the appeal is competent, having regard to a prohibition contained in a Provincial Statute, but their Lordships are of opinion that the Provincial Statute does

not affect the jurisdiction of the Privy Council to entertain an appeal from the Supreme Court of Canada.

The northern portion of the bridge crosses the north channel of the St. Lawrence by a cantilever span, and is supported on two abutments and six piers. The abutments are on the land to the north of the Cornwall Canal and on Cornwall Island; two of the piers are erected in the canal, one on the strip of land between the canal and the north channel of the St. Lawrence, two in the north channel, and one on Cornwall Island. The southern portion of the bridge crosses the south channel of the St. Lawrence. It rests upon two abutments, one on Cornwall Island, and one on land within the territory of the United States, and upon four piers, one erected on the island, and the other three south of the international boundary. No question arises on details or on cost of construction, and the position of the bridge is sufficiently shown on a map attached to the case of the appellants.

The Assessment Act (R.S.O. Stat., 1914, c. 195) contains the provisions on which the appellants and respondents respectively rely in support of their contentions. Section 2 of the Act defines "land," "real property," and "real estate" as including, *inter alia*, all structures erected or placed upon, in, over, under, or affixed to land and all structures erected or placed upon, in, over, under, or affixed to any highway or other public communication or water, but not the rolling stock of any railway, electric railway, tramway, or street railway. The distinction between structures placed over or affixed to land and structures placed over or affixed to any highway, canal, or other public communication or water, becomes important in considering the assessment of railways under section 47 of the Act. Subject to certain exemptions, which are not material to the present case, section 5 of the Act renders all real property in Ontario liable to taxation. The structure of the bridge would therefore, apart from the special provisions as to railways of the Act, appear to be liable to assessment. Where an international bridge is liable to assessment the method of valuation is specified in section 46.

Section 47 is the section under which steam railways are assessed to municipal taxation, and the present appeal depends on the construction of this section. It enacts that every steam railway company shall annually transmit to the clerk of every municipality in which any part of the roadway or other real property of the company is situate a statement under four heads. These four heads designate what property of a steam railway is liable to assessment. This statement is communicated to the assessor, who is directed to make the assessment on the prescribed basis. There is a third subsection which exempts from assessment certain structures and other property on railway lands and used exclusively for railway purposes or incidental thereto, notwithstanding anything contained in the

Act. It will be convenient to postpone the consideration of this subsection to a later stage.

Under (a) of sub-section (1) the railway company is required to state the quantity of land occupied by the roadway, and the actual value thereof (according to the average value of land in the locality), as rated in the assessment roll of the previous year. There is no difficulty in determining the nature of this statement. It would comprise the superficial area occupied by the roadway between the relevant termini within the particular municipality and a valuation based on the assessment roll of the previous year. The corresponding direction to the assessor is quite explicit. He is to assess the quantity of roadway or right of way returned in the statement at the actual value thereof according to the average value of land in the locality; but not including structures, sub-structures, and super-structures, rails, ties, poles, and other property thereon. Land in the locality may be agricultural land, or land of special value for building or commercial purposes. The effect is that the quantity of land occupied by the roadway is assessed at the same average land value as if such land had not been taken for the purpose of railway construction, and that a structure such as the bridge in question would not be included in the valuation.

Under (b) of sub-section (1) the statement is required to show the vacant land not in actual use by the company and the value thereof. This return and the method of assessment which the assessor is directed to follow cannot directly affect the present appeal, but the effect is that vacant land, not in actual use by a railway company, contributes to municipal taxation on the same basis as other vacant lands within the municipality.

Under (c) of sub-section (1) the statement is required to show the quantity of land occupied by the railway and being part of the highway, street, road, or other public land (but not being a highway, street, or road, merely crossed by the line of railway) and the assessable value as thereafter mentioned of all the property belonging to or used by the company upon, in, over, under, or affixed to the same. The quantity of land to be included in the return of the railway company would not comprise the land under the bridge crossing the two channels of the St. Lawrence. These channels are merely crossed by the line of railway. If, therefore, the channels are to be regarded as a highway, street, road, or other public land, they are excluded under the terms of the exception from the quantity of land which the company are required to return. There is no return of the assessable value of a structure not over or affixed to the land comprised within the statement. It may be noticed that under (a) the roadway occupied by the company has been returned and assessed. The statement of the quantity of land under (c) is not for the purpose of an overlapping assessment, and the assessable value to which this statement refers is not the

assessable value of land as such, but of property belonging to or used by the company upon, in, over, under, or affixed to any highway, street, road, or other public land.

The direction to the assessor under (c) of sub-section 2 is clearly not applicable to the assessment of the bridge in question. The words, "not being a highway, street, or road merely crossed by the line of railway," are repeated, and there is a direction that the structures to be assessed shall not include any bridges in, over, under, or forming part of any highway.

Under (d) of sub-section (1) the railway company are required to make a return of real property, other than aforesaid, in actual use and occupation by the company and its assessable value as thereafter mentioned. The assessor, under (d) of sub-section (2), is directed to assess the real property not designated in clauses (a), (b), and (c) of this sub-section in actual use and occupation by the company at its actual cash value, as the same would be appraised upon a sale to another company possessing similar powers, rights, and franchises. There is no doubt that the bridge is in actual use and occupation by the company. Its structure is clearly not designated in (a) or (b). The only structures, designated in (c), are structures over or affixed to any highway, road, or street.

In the opinion of their Lordships, it is doubtful whether the word "highway," in association with the words "road or street," would include the two channels of the St. Lawrence crossed by the bridge, but it is not necessary to decide this question, since, in their opinion, the structure of the bridge is excluded from assessability under the terms of sub-section (3).

Sub-section (8) enacts that, notwithstanding anything in the Act contained, the structures, sub-structures, super-structures, rails, ties, poles, wires, and other property on railway lands, and used exclusively for railway purposes or incidental thereto (except stations, freight-sheds, offices, warehouses, elevators, hotels, round-houses, and machine, repair and other shops) shall not be assessed. This differentiation between railway structures and buildings used in connection with railway business is familiar in English Law. The bridge does not come within the category of any of the exempted properties, and it is used exclusively for railway purposes or incidental thereto. The only question which arises for decision is whether it is "on railway lands."

In the opinion of their Lordships, the words "on railway lands" have no reference to the title by which lands are held. It does not make any difference for rating purposes by what title lands are held, so long as they are in the lawful actual use and occupation of the person or company on whom a rate is sought to be levied.

The bridge is affixed to the land on which the abutments and piers rest. Both the abutments and five out of the seven piers within the Canadian frontier are erected on land outside the channels of the St. Lawrence, and capable of being purchased and acquired by the railway

company under ordinary statutory procedure. There is no reason to assume that they are not lands in the lawful use and occupation of the railway company, and therefore in the ordinary sense railway lands. It is not necessary to enquire whether any special permission was required in reference to the use and occupation of land in the South Channel of the St. Lawrence, nor are any such questions raised, since the only effect of proving that such use and occupation are not lawful could not be in favour of establishing a liability to assessment. In the opinion of their Lordships the bridge is affixed to lands in the lawful use and occupation of the railway company, and is a structure on railway lands within the meaning of sub-section (3). They agree in the view expressed by Meredith, C. J. O., which is followed by Mr. Justice Anglin and Mr. Justice Davies: —

“The erection of the bridge having been authorised by the Parliament of Canada, it must be assumed for the purpose of the case that it is a lawful structure, that the railway company is entitled to maintain it, as it has been constructed, and that its occupation of the soil by the piers and by the super-structure, in so far as the latter occupies the land of the Crown, is a lawful occupation, and that assumption being made, the bridge is in my opinion a structure on railway lands within the meaning of sub-section (3).”

In the opinion of their Lordships the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE MUNICIPAL CORPORATION OF
THE TOWNSHIP OF CORNWALL

vs.

THE OTTAWA AND NEW YORK
RAILWAY COMPANY AND OTHERS

and

THE ATTORNEY-GENERAL FOR THE
PROVINCE OF ONTARIO.

DELIVERED BY
LORD PARMOOR.