

Privy Council Appeal No. 64 of 1919.

The Governors and Company of Adventurers of England trading into
Hudson's Bay - - - - - *Appellants*

v.

The Council of the Rural Municipality of Bratt's Lake, No. 129, and
others - - - - - *Respondents*

AND

Privy Council Appeal No. 83 of 1919.

J. E. Martin - - - - - *Appellant*

v.

The Council of the Rural Municipality of Snipe Lake, No. 259 - *Respondents*

FROM

THE COURT OF APPEAL FOR SASKATCHEWAN.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 1ST AUGUST, 1919.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD BUCKMASTER.

LORD PARMOOR.

MR. JUSTICE DUFF.

[*Delivered by* LORD PARMOOR.]

These are appeals from the Court of Appeal for the Province of Saskatchewan. In the Hudson's Bay Company's appeal, there are six respondents, but the same main questions arise in each case. It is, however, argued on behalf of the appellants that somewhat different considerations are raised in the case of those rural municipalities in which the burden of the surtax falls exclusively, or almost exclusively, on the appellant Company.

In the year 1670 Letters Patent were granted by King Charles II to certain persons incorporated by the name of the appellant Company, whereby certain lands and territories, rights of government and other rights, privileges, liberties, franchises, powers and authorities, were granted to the Company in His Majesty's Dominion in North America. By the British North America Act, 1867, provision was made for the admission of Rupert's Land and the North-West Territories or either of them, into the Union on certain specified terms and conditions. In 1868 the Rupert's Land Act was passed, and, for the purpose of that Act, the term Rupert's Land was defined to include the whole of the lands and territories held or claimed to be held by the appellant Company. Under the provisions of this Act a Surrender was made and duly accepted by Her Majesty Queen Victoria by an Instrument under Her Sign Manual and Signet, on the 22nd day of June, 1870. On the following day an Order in Council was issued declaring that Rupert's Land should from and after the said date be admitted into and become part of the Dominion of Canada upon the terms and conditions therein specified. It is not necessary to follow the further history, except to state that Saskatchewan and Alberta were created as Provinces of the Dominion in the year 1905. Clause 11 of the Deed of Surrender is as follows :—

“The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed upon the Company's land, trade or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said Surrender.”

The appellants submit that the tax, sought to be imposed upon them, is an exceptional tax within the meaning of the said clause, both in its nature and in its incidence, and that they are therefore exempted from liability to such taxation. They further submit that in any case the tax is not effectively imposed, as there was no specific application or appropriation of the moneys when levied and collected, and further that the moneys were not required for municipal purposes, since all the requirements of the municipality were met by the ordinary taxation to be levied under the Rural Municipality Act, R.S.S., 1909, c. 87.

The Rural Municipality Act constitutes municipalities which, so far as practicable, comprise an area of 18 miles square, and the respondents are the Councils of various rural municipalities in Saskatchewan. The Council of each municipality is constituted a body corporate, and is directed to appoint an assessor, whose duty it should be to make an assessment of the municipality in the manner provided. The appellants rely on section 250A which enacts that all municipal taxes shall be levied equally upon all rateable land in the municipality, according to the assessed value of such land. This section contains a declaration of the principle of equality where rates are levied on the assessed value of land, and has no direct application to the tax in question in this appeal. Section 294 provides for the preparation of estimates

of the probable expenditures of the municipality for the year; section 295 for the levy of the rate, and section 296 that the uniform rate of taxation to be authorised by the Council shall not in any one year exceed one per centum of the assessed value of the land. The tax from which the appellant Company claim exemption is levied as a surtax, under a series of sections headed Surtax Provisions. Section 323B enacts that in addition to the tax assessed under the provisions of 252 hereof it shall be the duty of the Council of every rural municipality, and it shall have power to annually assess, levy and collect a tax of $6\frac{1}{4}$ cents per acre, called a "surtax," on all lands within the municipality made subject to the same as hereinafter set forth. It was urged on behalf of the appellant Company that the words "in addition to" implied that the surtax should not be levied except so far as was necessary to supplement the ordinary taxation on assessed values, but, for reasons hereafter given, their Lordships cannot accept this construction. There is a provision that the land of any person who owns or occupies not more than forty acres in the municipality shall be exempt. Subject to this exemption, the land of any owner or occupant exceeding 1,920 acres, and the land of any owner or occupant of a less quantity which does not comply with specified conditions as to the area under cultivation, or residence, is subject to the tax, which is at a flat rate uniformly imposed on acreage. The provisions of the Act respecting the assessment and levy of municipal taxes are applied to the said surtax in the same manner, and to the same extent, as if the surtax were part of the general municipal levy, and for this purpose the said surtax roll is to be deemed to be and to be taken as a part of the assessment and tax roll of the municipality.

In 1914, when the surtax was first levied, there were 294 rural municipalities in Saskatchewan, of which 274 were in the fertile belt. The surtax was levied in 271 of these rural municipalities. In the case of the rural municipality of Chaplin the appellant Company own 8,839 acres. There were 549 taxpayers on the assessment roll, but all other land, except that of the appellant Company, was exempt from tax either through residence or cultivation. There are 12 other rural municipalities in which the appellant Company's land is the only land subject to the surtax. In the case of Nipawin the appellant Company own 10,818 acres. There were 561 taxpayers on the assessment roll but only one other person, besides the appellant Company, was charged with a surtax. In the rural municipality of Craik there were 565 taxpayers on the assessment roll, and four other persons, besides the appellant Company, were charged with the surtax. In the rural municipality of Abernethy there are 457 taxpayers on the assessment roll, but only 22 persons on the surtax roll. In Redburn there are 592 owners on the roll, and 21 are charged with surtax. In the rural municipality of Bratt's Lake the appellant Company is charged as the owner of 480 acres. There are 483 persons on the assessment roll and 49 on the surtax roll. The conditions in the respondents' Councils as selected are said

to be fairly illustrative of the general conditions in all the rural municipalities in Saskatchewan. In the aggregate, 1,778,844 acres of land belonging to the appellant Company are charged with the surtax. There is no doubt, therefore, of the importance of the questions raised in this appeal by the appellant Company.

The question mainly argued on behalf of the appellant Company before their Lordships, was whether the appellant Company is exempted from the surtax under the terms of Clause 11 of the Deed of Surrender. The first provision of this clause is that the "Company is to be at liberty to carry on its trade without hindrance in its corporate capacity." It was argued that this provision showed the wide character of the intended exemption but, apart from any bearing that this provision may have in determining the general construction of the clause, it is not possible to say that the surtax, in itself, is any interference with the liberty of the appellant Company to carry on its trade in its corporate capacity. The second provision is the important one, "No exceptional tax is to be placed upon the Company's land, trade, or servants." It is claimed that the surtax is exceptional either in its nature or in its incidence or both in its nature and incidence. No doubt the surtax was not a tax in force when the Deed of Surrender was executed, but at that date there were no taxes levied in the territory of Saskatchewan, and, if the test of novelty is applicable, it would mean that the appellant Company would be exempt from all taxes rendered necessary by progressive advance within the territory. In other words the clause would give exemption from all taxes. Their Lordships are unable to accept any such wide interpretation of the terms of the deed, or to hold that the language denotes any such far-reaching exemption. It was, however, further argued that if novelty in taxation was not sufficient to bring the surtax within the term "exceptional," as used in the Deed of Surrender, yet that such surtax was of so unusual a character, either in its nature or incidence or both in its nature and incidence, as to be fairly comprised within that term. It was urged that the surtax was neither uniform nor equal, and that its non-compliance with the principles either of uniformity or equality, brought it within the category of an exceptional tax. No doubt there is discrimination between owners and occupants who are residents or non-residents, between owners and occupants of a large or small acreage, between owners and occupants who do, or do not cultivate a certain proportion of their holdings, and this discrimination does, on the facts as they exist, throw in an especial manner the burden of the surtax on the appellant Company. At the same time, the surtax may be said to be both uniform and equal having regard to the fact that it is imposed not on value but on acreage. There is a uniform flat rate of $6\frac{1}{4}$ cents per acre, subject to exceptions of a uniform character to which all owners and occupants are entitled without discrimination, provided that they fulfil the specified conditions. The conditions imposed have the effect of throwing a heavy burden on the appellant

Company as compared with other ratepayers, in rural communities such as Chaplin and Nipawin, but this is the result of the large acreage of the holdings of the Company and not of any distinction between the position of the appellant Company and that of any other company or person. The real complaint appears to be to any system of taxation not based on assessed values, and in which the principle of discrimination is sanctioned, but their Lordships are of opinion that such a system of taxation is within the powers and discretion of the Councils of the rural municipalities, and that if such a system is adopted and applied generally, the appellant Company cannot claim to be entitled to special exemption under the terms of the deed. Different considerations would arise if it could be said that the appellant Company had been singled out to bear a special burden of taxation from which other members of the community in a similar position are exempt, but the surtax in question is not open to this criticism and no such case has been established. Mr. Nesbitt used an additional argument. He said that the term in the deed was intended to protect the appellant Company against any system of taxation which would place it at a disadvantage in competition with small retail dealers. To adopt this construction would be to introduce words into the exemption clause which are not there, and to open a wide range of discussion in each case. As a matter of fact a purchaser of land from the appellant Company would, as regards the surtax, stand in exactly the same position as a purchaser from any other company or person, whether such other company or person is a small or large owner of land. It is further of importance to note that the exceptional tax is a tax applicable not only to the Company's land but also to the Company's trade and servants. It could not be said that a servant of the Company, if also an owner or occupant of land within a rural community, and subject as such to the surtax in common with other owners or occupants in a similar position, was subject to an exceptional tax. The last provision in the exemption clause, which prohibits any import duty on goods introduced by the Company previously to the acceptance of the surrender, has no application to the surtax in question, and does not affect the construction of the preceding provisions. Their Lordships are of opinion that the appellant Company have not established the case that the surtax in question is an exceptional tax from which they are exempt under the terms of the Deed of Surrender.

In the second place the appellant Company contended that the surtax was not validly imposed as there was no application or appropriation of the moneys to be levied, and further that the moneys were not required for municipal purposes, as all the requirements of each municipality were or should be met by moneys levied by ordinary municipal assessment and taxation under Part VII of the Rural Municipality Act, R.S.S., 1907, c. 87. In the absence of evidence to the contrary it must be

presumed that the surtax is levied for legal purposes. Section 323 (i) in the Statute applies all the provisions of the Rural Municipality Act respecting the assessment levy and collection of municipal taxes to the surtax in the same manner and to the same extent as if such surtax were part of the general municipal levy, and for these purposes the surtax roll is to be deemed to be taken as part of the assessment and tax roll of the municipality. It is not suggested that there has been any irregularity in procedure, and under these circumstances it is difficult to see in what way the question of the use of the proceeds of the surtax by the Municipal Council has any bearing on the case of the appellants, or takes away from the municipality any right of action which apart from this consideration it would otherwise possess. The whole case, however, of the appellant Company on this point rests on a misunderstanding of the scheme of taxation comprised in the taxing Act. The surtax is a tax which it is the duty of the Council of any rural municipality annually to assess, levy and collect on all lands within the municipality subject to the tax, and is to be in addition not to any amounts levied or collected under the provisions of section 252, but to the tax itself. This does not mean that the surtax is to be regarded as a supplementary source of revenue and only to be levied so far as there may be deficiency in the amount levied under section 252, but that it is to be an additional tax levied annually, so that the amount raised so far as it is applicable, may be paid into the general municipal account on the credit side. The estimates to be prepared under section 294 are simply normal estimates of probable expenditure of the municipality for the year, and the levy under section 295 upon all lands entered on the assessment roll at a uniform rate on the dollar is of such an amount as shall be deemed sufficient to meet the estimate of expenditure. The sufficiency of the amount would depend on the extent to which any moneys had been placed to the credit of the municipality from whatever source, and one source would be any monies which had been so credited as the result of the collection of the surtax. Section 296 provides that the uniform rate of taxation to be levied under section 295 shall not exceed one per centum of the assessed value of land, an indication that this source of taxation might not in all cases meet the municipal expenditure. There is no warrant for the assumption that all the requirements of a municipality are to be met by the power to tax on assessed values contained in the assessment roll, and unless this assumption can be maintained the argument of the appellant Company fails. Section 250A only applies to taxes levied upon the rateable value of lands according to the assessed value of such lands, and does not affect the duty of the Council of the municipality to annually assess, levy and collect a surtax under section 323B. In the opinion of their Lordships the contention of the appellant Company under this head of its appeal fails, and the appeal must be dismissed.

The appeal of *Martin v. The Council of the Rural Municipality of Snipe Lake, No. 259*, raises the contention, raised in the

appeal of the Hudson's Bay Company, that the surtax legislation did not effectively impose the surtax. The same considerations arise and the same result follows. The appeal must be dismissed.

Their Lordships will humbly advise His Majesty that both of the above appeals should be dismissed with costs.

In the Privy Council.

THE GOVERNORS AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY

vs.

THE COUNCIL OF THE RURAL MUNICIPALITY OF BRATT'S LAKE, No. 129, AND OTHERS.

J. E. MARTIN

vs.

THE COUNCIL OF THE RURAL MUNICIPALITY OF SNIPE LAKE, No. 259.

DELIVERED BY LORD PARMOOR.

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