Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Corporation of the Town of St. John's and another v. *The Central Vermont Railway Company, from the Supreme Court of Canada; delivered 25th July* 1889.

Present:

LORD WATSON.
LORD BRAMWELL.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

By the Quebec Act, 44 Vict., cap. 62, which amends and consolidates previous statutes relating to the incorporation of the town of St. John's, the Appellant Corporation is (Section 86) authorized to levy annually on all lands, town lots, and parts of town lots within the municipality, with the buildings and erections thereon, a sum not exceeding one half cent in the dollar on their whole real value as entered on the assessment roll of the town. Section 98 of the Act incorporates certain sections of "The Town Corporation General Clauses Act, "1876" (Statutes of Quebec, 40 Vict., cap. 60), including the three following clauses, upon the construction of which this appeal mainly depends:—

"323. It shall be the duty of the valuators in office to make annually, at the time and in the manner ordered by the Council, the valuation of the taxable property of the municipality, according to the real value."

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" 326. Every iron Railway Company or wooden Railway Company, other than those mentioned in the preceding section, and possessing real estate in the municipality, shall transmit to the office of the Council, in the month of May in each year, a return showing the actual value of their real estate in the municipality other than the road, and also the actual value of the land occupied by the road, estimated according to the average value of land in the locality.

" Such return must be communicated to the valuators by the Secretary-Treasurer in due time."

" 327. The valuators, in making the valuation of the taxable property in the municipality, shall value the real estate of such Company according to the value specified in the return given by the Company.

" If such return has not been transmitted in the time prescribed, the valuation of all the immoveable property belonging to the Company shall be made in the same manner as that of any other ratepayer."

The Central Vermont Railway Company, the Respondent in this appeal, is the owner of a line of iron railway, part of which is within the municipal limits of the town of St. John's. The municipal boundary extends to the *medium filum* of the Richelieu, a navigable river, over which the Respondent's railway is carried by a wooden bridge, some of its piers having their foundations in the *solum* of the river, which, in so far as the interests of navigation are concerned, is subject to the legislative authority of the Dominion. The Respondent Company did not, in any of the years from 1880 to 1884, both inclusive, make the return to the Council which is prescribed by Section 326 of the General Act; and, in each of these years, its real estate within the municipality was valued for the purposes of

the assessment roll, by the official valuators of the town, in terms of Section 327.

For the year 1884 the entry made in the roll was in these terms:—

La Compagnie de Chemin de Fer de Central Vermont, étant pour la partie de son pont en bois dans les limits de la ville - - -	$12,000

In each of the four years following, the valuation of the Respondent's real estate within the boundaries of the town, as entered in the roll, included these two items:—

	$
Railway tracks from East Longueuil Street to bridge - -	10,000
Part of railway bridge within limits of town of St. John's - -	10,000

The Appellant Corporation annually imposed municipal assessments upon the basis of these valuations, no part of which has been paid by the Respondent. In consequence of such default, a distress warrant was issued by the Corporation empowering a bailiff to distrain for the amount of the assessments in arrear, with interest.

The Respondent Company, on the 18th December 1884, made application to the Superior Court of the Province of Quebec for a writ of injunction ordering the Corporation to stay proceedings upon the warrant until further orders of the Court; and on the 19th December a writ of injunction was issued by Chagnon, J., upon the applicant's giving security in terms of the Quebec Act in that behalf of 1878. On the 10th January 1885 the Corporation filed a petition to quash the injunction, and after a variety of procedure, which it is unnecessary to detail, Chagnon, J., on the 10th March 1885, gave judgment annulling the writ of injunction, with costs. On an appeal by the present

Respondent, the decision of the Superior Court was unanimously affirmed by the Court of Queen's Bench for the Province, consisting of Dorion, C. J., with Monk, Ramsay, Cross, and Baby, J. J.

The case was then carried by appeal to the Supreme Court of Canada, who, on the 20th June 1887, reversed, by a majority of four against two, the judgments of both Courts below, found that the warrant and all proceedings following thereon were illegal and null, and ordered that the same should be set aside, and that a writ of injunction do issue out of the Superior Court for Lower Canada, enjoining the Corporation to desist from all proceedings to enforce the warrant.

Chief Justice Ritchie, with whose opinion Strong, Henry, and Gwynne, J.J., substantially agreed, stated the real controversy between the parties to be " whether or not anything more of " the land on which the superstructure of the " railroad is placed can be assessed in addition " to the land itself;" and on the construction of the clauses of the General Act already quoted, the learned Chief Justice was of opinion that " the Legislature has carefully protected railways " from any local assessment beyond the mere " value of the land, apart from, and independent " of, the roadway with its superstructure."

The two Judges of the minority were Fournier and Taschereau, J.J. Fournier, J., does not, in his elaborate opinion, deal with the point which was said by the Chief Justice to constitute the real matter of controversy. Taschereau, on the contrary, states that the present Respondent attacked the warrant of distress on two grounds, the one affecting the whole assessments, and the other confined to the assessment for the year 1880. The learned Judge said, " The first, which " applies to all the taxes claimed on the part of

" the Appellants' road on *terra firma*, is that the " land only occupied by the road is taxable, and " not the road bed itself." His reasons for coming to a different conclusion from that of the majority are thus expressed :—" We have been " referred to the case of the Great Western *v.* " Rouse (15 U. C., Q. B., 168), in which it was " held that only the land occupied by the railway " and not the superstructure is taxable. But " this case has no application here, because the " Statute of 1853, Upper Canada Assessment " Act, 16 Vict., cap. 182, sect. 21, does not pro- " vide, as the Quebec Statute I have cited does, " that if the Company fails to make a return to " the Council the valuation of all its immoveable " property shall be made as that of any other " ratepayer."

Her Majesty, in accordance with the advice of this Board, was pleased, by Order in Council dated the 17th December 1887, to allow the present Appellants to enter and prosecute an appeal against the judgment of the Supreme Court. In the petition for special leave, which is recited in the Order, the Appellants set forth correctly the grounds upon which the learned Chief Justice, and the Judges who concurred with him, decided in favour of the present Respondent, and then submitted " that if the judgment of the Supreme " Court, contrary to the view of both Courts in " the Province and to that of the two French " Judges in the Supreme Court, is correct, the " power of taxation of the municipalities in the " Province of Quebec is greatly limited, and that " whether it is by law so limited is a question of " great and general importance."

Their Lordships would not have made any reference to these initial proceedings, had it not been that, at the hearing of the appeal, their time was chiefly occupied by an endeavour on the part of the Appellant Corporation to argue that,

as matter of fact, they had not, in any of the yearly rolls upon which these assessments were made, valued aught beyond the land occupied by the railway, and that they did not desire to include, and had not included, the bridge or other superstructures in the estimate. Their Lordships purposely abstain from laying down any rule as to the points which an Appellant may competently raise under an appeal by leave from the Supreme Court of Canada. That must depend upon the special circumstances of each case. But it must be understood that parties who get such leave, upon the distinct representation that they desire to raise a particular question of law of great and general importance, cannot be permitted, at the hearing of the appeal, to change front and say that no such question arises, and to argue that the case turns upon a question of fact which the Supreme Court has wrongly assumed or decided. If the Appellant Corporation, in petitioning for the exercise of Her Majesty's prerogative, had stated the same case which they attempted to present in argument, it is almost matter of certainty that leave to appeal would have been refused.

Upon the construction of the Municipal Acts, their Lordships entirely concur in the view taken by Chief Justice Ritchie. Section 323 of the General Act imposes upon the valuators appointed by the Council the duty of making a valuation of the "taxable property of the municipality;" and by the terms of Section 326 no part of a railway is made taxable property, except the land, as land, occupied by the road. In their Lordships' opinion the enactment of Section 327, to the effect that, when the Company make no return, the valuation of all their immoveable property shall be made in the same manner as that of any other ratepayer, refers to their immoveable property already declared to be

taxable, and simply amounts to a direction that the value of such taxable estate shall be estimated by the town's valuators instead of the Company itself.

The judgment of the Supreme Court ought therefore to be affirmed; and their Lordships will humbly advise Her Majesty to that effect. The Appellants must pay the costs of this appeal.