

25,1951

In the Privy Council.

No. 42 of 1950.

ON APPEAL FROM THE SUPREME  
COURT OF CANADA

UNIVERSITY OF LONDON  
W.C.1.  
12 NOV 1956  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

30728

BETWEEN

BENNETT & WHITE (CALGARY) LIMITED

(*Plaintiffs*) APPELLANTS

AND

MUNICIPAL DISTRICT OF SUGAR CITY No. 5

(*Defendants*) RESPONDENTS.

APPELLANTS' APPENDIX OF STATUTES

The following extracts of Statutes comprise all sections which are referred to in the Appellants' case or which were referred to in argument before the lower Courts or which were referred to in the Judgments of the lower Courts :

BRITISH NORTH AMERICA ACT, 1867,  
30 & 31 VICTORIA, CHAPTER 3.

125. No lands or property belonging to Canada or to any Province shall be liable to taxation.

THE MUNICIPAL DISTRICTS ACT,  
REVISED STATUTES OF ALBERTA, 1942,

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CHAPTER 151, AS AMENDED UP TO AND INCLUDING THE YEAR 1947.

2. In this Act, unless the context otherwise requires,—

(b) "Conditional owner" means any person being the purchaser, lessee, licensee or permittee from the Dominion of Canada or the Province of land or other property if such land or property is not exempt from assessment or taxation by reason of the provisions of *The Assessment Act* ;

APPELLANTS' APPENDIX OF STATUTES

- (n) "Land" means lands, tenements and hereditaments and any estate or interest therein, exclusive of minerals, and without restricting the generality of the foregoing words, includes growing timber ;
- (r) "Owner" means any person who is registered under *The Land Titles Act* as the owner of a freehold estate in possession of land ;
- (w) "Purchaser" means any person who has purchased or otherwise acquired land within the district whether he has purchased or otherwise acquired the land direct from the owner thereof or from another purchaser, and has not become the owner thereof ; 10

## PART VII.

### RATES AND TAXES.

#### IMPOSITION OF TAX.

**287.** The council shall as soon as practicable in each year prepare in the prescribed form, a detailed estimate of the probable expenditure of the municipal district for the year for ordinary municipal purposes, and shall cause a copy of the estimate to be incorporated in the minutes.

**288.** Upon the completion of the estimate of probable expenditure the council shall proceed to make an estimate of the probable revenue of the municipal district for the year to be derived from business taxes and 20 sources of revenue other than taxation, and shall by by-law authorize the secretary-treasurer to levy for ordinary municipal purposes upon the assessed value of all lands, improvements and personal property set out in the assessment roll, a tax at such uniform rate on the dollar as the council deems sufficient to produce the amount of the expenditures as estimated by the council less the amount of the estimated probable revenue from business taxes and sources other than taxation, due allowance being made for the amount of taxes which may reasonably be expected to remain unpaid, and for the offset of business or improvement tax as hereinafter 30 provided for.

**289.—(1)** The council shall by by-law authorize the secretary-treasurer to levy a tax at such uniform rates on the dollar as the council deems sufficient to produce the amount of such sums as shall annually be requisitioned by the board of any school division, school district or municipal hospital district upon the assessed value of all lands, improvements and personal property set out in the assessment roll and situate within the district and with respect to any school division, school district or municipal hospital district situate within the school division, school district or municipal hospital district.

291.—(1) On or before the first day of September in each year the secretary-treasurer of every municipal district shall enter in the assessment and tax roll for the year a statement of all taxes against each parcel or personal property assessed upon the roll, and the statement shall show,—

- (a) the several rates of taxation for the current year ;
- (b) the total of the mill rates levied ;
- (c) the total taxes due for the current year on each parcel of land or other property ;
- (d) the total arrears of taxes due on each parcel of land or other property.

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(2) On or before the first day of September in each year the secretary-treasurer of every municipal district shall enter in the assessment and tax roll a statement of the business taxes payable by each person assessed upon the roll in respect of a taxable business, trade or profession, and such statement shall show,—

- (a) the several rates of business taxation (municipal or school, or both) for the current year ;
- (b) the total of the rates levied for business tax ;
- (c) the total business tax due for the current year in respect of each taxable business, trade or profession ;
- (d) the total arrears of business tax due in respect of each taxable business, trade or profession.

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(3) The business tax section of the roll shall be distinct and separate from the amalgamated tax section.

293. Every owner, purchaser and conditional owner of assessed land shall, whether his name appears on the assessment roll or not, pay taxes upon the assessed value thereof at the rates lawfully imposed thereon, irrespective of the amount or nature of his interest in the property :

30 Provided always that no sum in excess of the taxes, penalties or costs due in respect of any property shall be exacted from any or all of such persons.

295.—(1) The secretary-treasurer shall mail to each person whose name appears on the assessment roll and to the address shown therein, notice of the amount of taxes due by him in respect of the property or business for which he is assessed ; and the entry of the date of mailing each such notice followed by the initials or stamped with a symbol representing the initials of the secretary-treasurer or any person authorized by him for the purpose on the roll shall be *prima facie* evidence of the mailing of the notice on the date entered without proof of the appointment or signature of the secretary-treasurer and the absence of entry of such date and initials shall be *prima facie* evidence that the person's address is unknown.

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(2) Every notice shall show the property or business assessed, the assessed value, the several rates of taxation for the current year, the total taxes levied for the current year, the arrears of taxes and the total taxes due, and shall be in the prescribed form.

(3) Notwithstanding the previous subsections, no taxation notice need be sent to any purchaser unless the notice, provided for by section 27 of *The Assessment Act*, requesting that notices of assessment and taxation should be sent to him has been duly received by the secretary-treasurer.

#### COLLECTION OF TAXES.

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**305.**—(1) The taxes due in respect of any land, mineral or timber or business with costs may be recovered with interest as a debt due to the municipal district from any person who was the owner, conditional owner or purchaser of the land or the mineral or the timber licensee of the timber at the time of its assessment or subsequently became the owner, conditional owner, purchaser or timber licensee of the whole or any part thereof, saving his recourse against any other person and shall be a special lien on the land, mineral or timber if not exempt from taxation by the Province in priority to every claim, privilege, lien or incumbrance of every person except the Crown, and the lien and its priority shall not be lost or impaired 20  
by any neglect, omission or error :

(2) The production of a copy of so much of the assessment roll as relates to the taxes payable by any person purporting to be certified as a true copy by the secretary-treasurer, shall be *prima facie* evidence of the debt.

(3) For the purpose of this section all taxes shall be deemed to be due on the day on which the tax notice respecting the same was mailed as shown by the assessment roll and where the address of any owner conditional owner or purchaser is unknown a tax notice shall be deemed to have been mailed upon the date upon which a tax notice was first mailed to any owner 30  
conditional owner or purchaser.

**310.**—(1) In case taxes which are a lien upon the land remain unpaid for one month after the mailing of the tax notice hereinbefore provided for the secretary-treasurer or any person appointed by him in writing may levy the same with costs by distress as a landlord may recover rent in arrears upon,—

- (a) the goods or chattels wherever found within the Province belonging to any owner, purchaser or conditional owner of the land (each of whom is hereinafter referred to as "a taxable person") or belonging to any occupier of the land ; or 40
- (b) the interest of any taxable person or any occupier in any goods or chattels found on the land, including his interest in any goods or chattels to the possession of which he is entitled under a contract

for purchase or any contract by which he may become the owner thereof upon performance of any condition ; or

- (c) any goods or chattels on the land where the title to such goods or chattels is claimed in any of the ways following :
- (i) by virtue of an execution against a taxable person, or an occupier ;
  - (ii) by purchase, gift, transfer or assignment from a taxable person or occupier, whether absolute or in trust, or by way of mortgage or otherwise ;
  - 10 (iii) by the wife, husband, daughter, son, daughter-in-law or son-in-law of a taxable person or occupier, or by any relative of his in case such relative lives on the land as a member of the family ;
  - (iv) by virtue of any assignment or transfer made for the purpose of defeating distress.

(2) Notwithstanding anything hereinbefore contained no distress shall be made upon the goods or chattels of an occupier for any taxes which are a lien upon land if they were not first placed upon the tax roll during the period of his tenancy or occupancy of the land assessed.

- 20 (3) The onus of proof that any goods or chattels found upon land are not the property of a taxable person or occupier shall lie upon the person asserting the same.

(4) When taxes which are not a lien on land remain unpaid in the case of a resident of the municipal district for fourteen days, or in the case of a non-resident for one month after the mailing of the tax notice, the secretary-treasurer, or any person appointed by him in writing, may levy the same with costs by distress either,—

- (a) upon the goods or chattels of the person taxed wherever found within the Province ; or
- 30 (b) upon the interest of the person taxed in any goods to the possession of which he is entitled under a contract for purchase or a contract by which he may or is to become the owner thereof upon the performance of any condition ; or
- (c) upon the goods and chattels in the possession of the person taxed, where title to the same is claimed,—
  - (i) by virtue of execution against the person taxed ;
  - (ii) by purchase, gift, transfer or assignment from the person taxed, whether absolute or in trust or by way of mortgage or otherwise ; or
  - 40 (iii) by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the person taxed or by any other relative of his in case such relative lives with the person taxed or assists him in his business ;

(d) and also upon the goods and chattels or interest therein, as the case may be, falling within any of the classes mentioned in the foregoing clauses of this section, of any person who occupies the premises in respect of which the business tax was levied, as purchaser of the business theretofore carried on therein by the person taxed.

## PART IX.

### LEGAL PROCEEDINGS.

#### ACTIONS BY AND AGAINST MUNICIPAL DISTRICTS.

**370.** Where duties, obligations or liabilities are imposed by law upon any person, company or corporation or where contracts or agreements are or have heretofore been created, enacted or validated by any statutes imposing such duties, obligations or liabilities the municipal districts shall have the right by action to enforce such duties or obligations and the payment of such liabilities and to obtain as complete and full relief and to enforce the same remedies as could have been maintained, obtained and enforced therein by the Attorney General as plaintiff or as plaintiff upon the relation of any person interested. 10

**8.—(2)** The board of a school district which collects its own taxes and the council of any municipality, may provide by by-law passed not later than the first day of May in any year, that in the said year all personal property within the school district or municipality, as the case may be, shall be liable to assessment and taxation. In a municipality this assessment may be made for municipal purposes or for school purposes or for both. 20

**(3)** In any school district or municipality in which personal property is liable to assessment and taxation, it shall be assessed at its actual cash value as it would be appraised if taken in payment of a just debt.

**11.—(1)** Where buildings are erected by a tenant upon land which is part of the station grounds or right-of-way of a railway company and which are held of a railway company under lease, whether the buildings are affixed to the land or not, the buildings together with the land forming the site thereof or occupied therewith shall be assessed to the tenant as if he were the owner thereof. 30

**(2)** Where land is held under lease from a railway company as an industrial site, such land may be assessed to the tenant of the site as if he were the owner thereof; and all buildings and improvements thereon whether affixed to the land or not and whether the tenant has any interest therein or not shall be assessed to him as if he were the owner thereof.

**(3)** The name of every such tenant if assessed shall be placed upon the assessment roll as owner of the buildings and the land forming the site thereof or occupied therewith. 40

(4) Every such tenant shall, whether his name appears on the assessment roll or not, pay taxes upon the assessed value of the buildings and the land forming the site thereof or occupied therewith at the rates lawfully imposed thereon, irrespective of the amount or nature of his interest therein. [1938, c. 81, s. 11.]

12.—(1) In case there are upon, in, over, under or affixed to any land, which is exempt from assessment and taxation, any buildings, structures or erections, whether affixed to the land or not, which are the property of some person other than the owner of the land, then the owner of any such  
10 buildings, structures or erections shall be liable to assessment and taxation in respect thereof as if the same were land, and all such buildings, structures and erections shall be assessed at their fair actual value separately from the land forming the site thereof.

(2) The name of the owner of any property assessed pursuant to this section shall be placed upon the assessment roll.

26.—(1) The secretary-treasurer shall upon the receipt by him of the return made by the assessor pursuant to the provisions of this Act, immediately prepare an assessment roll in which he shall set out as far as his then information permits,—

- 20 (l) the name of the person who is the owner or of the person who is in legal possession of assessable personal property or the names of both such persons ;  
(m) the assessed value of all assessable personal property ;

27.—(1) When any assessment roll has been duly prepared, the secretary-treasurer shall forthwith mail to every person whose name appears on that roll an assessment slip which shall be in the form prescribed, and shall make or cause to be made an entry on the roll of the date of mailing of each slip which entry shall be initialled or stamped with a symbol representing his initials by the secretary-treasurer or any person authorized  
30 by him.

THE ASSESSMENT ACT, REVISED STATUTES OF ALBERTA, 1942,  
CHAPTER 157, AS AMENDED UP TO AND INCLUDING THE YEAR 1947.

2. In this Act, unless the context otherwise requires,—

- (d) "Conditional owner" means any person being the purchaser, lessee, licensee or permittee from the Dominion of Canada or the Province, of land or other property if such land or property is not exempt from assessment or taxation by reason of the provisions of this Act ;  
40 (j) "Land" means lands, tenements and hereditaments and any estate or interest therein, and shall, but not so as to restrict the generality of the foregoing words, include growing timber ;

- (m) "Municipality" means every town and village, every municipal district, and every improvement district;
- (n) "Owner" means in the case of land, any person who is registered under the Land Titles Act as the owner of land, or, used with reference to property other than land, any person who is in legal possession thereof;
- (q) "Personal property" means all goods and chattels;

#### LIABILITY TO ASSESSMENT

3.—(1) This Act shall relate to and govern the liability to assessment and taxation of property and business in every municipality for the purposes of *The Town and Village Act*, *The Municipal District Act*, *The Improvement Districts Act*, *The Special Areas Act*, and *The School Taxation Act*, or any of them, and shall be read and construed as if the same had been enacted as a part of each of the said Acts, save and except only to the extent that this Act expressly provides to the contrary, and wherever in any of the said Acts reference is made to the assessment and taxation of property and business, the assessment made pursuant to this Act shall be the assessment to which the reference is made. 10

4. Subject to the provisions of *The Industries Assessment Act*, *The Irrigation Districts Act*, *The Soldiers Relief Act* and *The Special Areas Act*, and subject also to the other provisions of this Act, all property and every interest therein in a municipality which is subject or liable to taxation by an Act of the Province, save and except only such property as is declared by this Act to be exempt, shall be liable to assessment and taxation by the municipality. 20  
[1938, c. 81, s. 4.]

5.—(1) It is hereby declared that for the purposes of this Act, the following property shall be exempt from assessment and taxation,—

- (o) every right, title and interest of His Majesty in any property whatsoever; 30
- (r) money, bank notes, cheques, bills of exchange, promissory notes and choses in action;
- (z) all motor vehicles.

32. Where any person was at the time of the assessment taxable in respect of any property, business, trade or profession, or in respect of any share or interest therein, in respect of which his name was entered upon the assessment roll, and there has been no complaint to the court of revision, in accordance with the provisions of this Act, then upon the expiration of the time hereinafter limited for the lodging of complaints, the assessment of the property, business, trade or profession or any share or interest therein entered opposite his name shall be deemed incontestably to be the proper, lawful and final assessment of the property, business, trade or profession or of his share or interest therein. 40



33. Where any person was at the time of the assessment taxable in respect of any property, business, trade or profession or in respect of any share or interest therein, in respect of which his name was entered upon the assessment roll, and there has been a complaint to the court of revision, but there has been no appeal to the Alberta Assessment Commission, as herein provided for, then immediately upon the expiry of the time limited for forwarding notice of appeal to the Commission, the assessment of the property, business, trade or profession or any share or interest therein entered opposite his name upon the roll, or as altered by the court of revision, as the case may be, shall be deemed incontestably to be the proper, lawful and final assessment of the property, business, trade or profession or of his share or interest therein.

### COMPLAINTS AND APPEALS

#### COMPLAINT TO COURT OF REVISION

35.—(1) Any person whose name appears on the assessment roll of any municipality, or any board of a collecting school district wholly or partially situate within any municipality may complain to the court of revision in respect of,—

- (a) any error or omission alleged in respect of the assessment of any property or business ;
- (b) any assessment alleged to be too high or too low ;
- (c) any property or business in any way wrongfully assessed ;
- (d) the name of any person alleged to be wrongfully entered upon or omitted from the assessment roll.

(2) Any such person or board may notify the secretary-treasurer in writing of the particulars and grounds of his complaint.

37.—(1) Complaints of which notice has been duly given in respect of any property, trade, business or profession situate or carried on in any municipality other than an improvement district shall be dealt with by the court of revision of the municipality, subject to appeal as is in this Act provided.

(2) In any municipality which is a town or a municipal district having a council of more than five members, the court of revision shall consist of five members of the council appointed annually by the council, and in any municipality which is a village or a municipal district having a council of five members or less, the court of revision shall consist of the members of the council.

45. Upon the termination of the sittings of the court of revision, or where there are no complaints upon the expiry of the time for complaining thereto, the secretary-treasurer shall, over his signature, enter at the foot of the last page of the roll, the following certificate, filling in the date of the entry : “ Roll finally completed this.....day of ..... , 19.....” ; and the roll as thus finally

completed and certified shall be the assessment roll for that year, subject to amendment on appeal to the Alberta Assessment Commission, and to any amendment that may be necessary to bring the roll into conformity with the assessment of the municipality made by the Commission, and any directions of the Commission with respect thereto, and subject to any further amendment as herein provided, and shall be valid and bind all parties concerned, notwithstanding any defect in or omission from the said roll or mistake made in or with regard to such roll or any defect, error or mis-statement in any assessment slip or notice or any omission to deliver or to transit any assessment slip or notice. 10

#### APPEAL TO THE ALBERTA ASSESSMENT COMMISSION

47.—(1) Any person who, or the assessment of whose property is affected by the decision of the court of revision, or of the person or persons from time to time designated by the Minister as the person or persons to deal with complaints may appeal to the Alberta Assessment Commission against the decision and may also appeal against the omission, neglect or refusal of the court to hear or decide a complaint made to it, and in hearing all such appeals the Commission shall be governed by the provisions of this Act and *The Alberta Municipal Assessment Commission Act*.

51. As soon as a decision is given upon any appeal, the assessment roll shall be altered and amended to conform therewith, and the secretary-treasurer shall write his initials opposite any part of the roll which is amended. 20

53. In determining all matters brought before the Commission it shall have jurisdiction to determine not only the amount of the assessment, but also all questions as to whether any things are or were assessable or persons were properly entered on the assessment roll or are or were legally assessed or exempted from assessment.

#### THE VEHICLES & HIGHWAY TRAFFIC ACT, REVISED STATUTES OF ALBERTA, 1942,

##### CHAPTER 275.

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2. In this Act, unless the context otherwise requires,—

- (h) "Motor vehicle" means every vehicle propelled by any power other than muscular power, except traction engines and such motor vehicles as run only upon rails or tracks;
- (n) "Vehicle" means a motor vehicle, trailer, traction engine and any vehicle drawn, propelled, or driven by any kind of power, including muscular power; but does not include the cars of electric or steam railways running only upon rails, or trolley buses.

119. Except when an Act specifically enacts to a contrary effect, no municipality shall have the power to pass, enforce or maintain any by-law requiring from any owner of a motor vehicle or chauffeur, any tax, fee, 40

license or permit for the use of the public highways, or excluding any of such persons from the free use of the public highways, except upon such driveway, speedway or road as has been or may be expressly set apart by by-law for the exclusive use of horses and light carriages, or which shall in any way affect the registration or numbering of motor vehicles or authorizing a greater rate of speed than is herein permitted, or forbidding the use of the public highways, contrary to or inconsistent with the provisions of this Act; and all such by-laws now in force are hereby declared to be of no validity or effect:

- 10 Provided that nothing in this section shall be deemed to derogate from the power of any city, town or village to pass a by-law requiring that all vehicles shall be brought to a stand-still before entering upon any highway or highways specified in the by-law.

THE PUBLIC SERVICE VEHICLES ACT,  
REVISED STATUTES OF ALBERTA, 1942,  
CHAPTER 275.

2. In this Act, unless the context otherwise requires,—  
20 (g) “Motor vehicle” includes automobiles, locomobiles, motor cycles and other self-propelled vehicles excepting cars of electric and steam railways and other motor vehicles running only upon rails or tracks or solely upon railway company property;

THE GARAGEMEN'S LIEN ACT,  
REVISED STATUTES OF ALBERTA, 1942,  
CHAPTER 233.

2. In this Act, unless the context otherwise requires,—  
(b) “Motor vehicle” means every vehicle propelled by any power other than muscular power except aeroplanes and such motor vehicles as run only on tracks or rails.

30 THE FUEL OIL TAX ACT, REVISED STATUTES OF ALBERTA, 1942,  
CHAPTER 45

2. In this Act, unless the context otherwise requires,—  
40 (f) “Motor vehicle” includes automobiles, locomobiles, power units, motor cycles, pedal bicycles with motor attachment, snowmobiles, snowplanes, tractors, aeroplanes, motor boats, and all other self-propelled vehicles, excepting cars of electric and steam railways and other motor vehicles running only upon rails or tracks or solely upon railway company property; and for the purpose of this paragraph “tractor” includes an engine used for the purpose of drawing a trailer, but does not include an engine used for such purpose by a farmer on a farm or farms for agricultural purposes;

In the Privy Council.

No. 42 of 1950

ON APPEAL FROM THE SUPREME COURT  
CANADA.

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BETWEEN

BENNETT & WHITE (CALGARY)  
LIMITED ... (*Plaintiffs*) APPELLANTS

AND

MUNICIPAL DISTRICT OF SUGAR  
CITY No. 5 (*Defendants*) RESPONDENTS

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APPELLANTS' APPENDIX  
OF STATUTES

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