

United Towns Electric Company Limited - - - *Appellan*
v.
His Majesty's Attorney General - - - *Respondent*

FROM

THE SUPREME COURT OF NEWFOUNDLAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH JANUARY, 1939

Present at the Hearing :

LORD ATKIN
LORD THANKERTON
LORD RUSSELL OF KILLOWEN
LORD WRIGHT
LORD PORTER

[Delivered by LORD THANKERTON]

This is an appeal by leave of the Supreme Court of Newfoundland from a judgment of that Court dated the 1st May, 1937, which confirmed assessments to income tax made on the appellant for the years 1929 to 1934 inclusive in respect of all its undertakings.

Notice of the assessments was given to the appellant by the Commissioner for Finance on the 20th March, 1936, and on the 27th March the appellant gave notice of objection to the assessments under section 15 of the Income Tax Act, 1929, on the ground that the appellant was exempted by statute from the payment of income tax. The matter was thereupon referred by the Commissioner for Finance under section 15 to the Supreme Court for hearing and determination. Thereafter by agreement between the respondent and the appellant the facts were set out in the form of a special case for the opinion of the Court dated the 3rd February, 1937, and on the 5th February the Court ordered that the matter be heard by way of special case. The only matter in issue is the appellant's liability to tax; no question arises as to the amount of the assessments.

The appellant company was incorporated in 1902 under a public Act entitled "United Towns' Electrical Company Act" (hereinafter called "The Act of 1902"), for the purpose of supplying electricity to the towns of Harbour Grace, Carbonear and Heart's Content. The Act contained the following exempting provision,

" 30. The company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the company shall be exempt from taxation."

Under section 36 the Act was to be deemed a public Act, and admittedly the enterprise was one of public utility.

In 1913 the Conception Bay Electric Company was incorporated under the Conception Bay Electric Company

Act (hereinafter called "The Act of 1913"), for the purpose of supplying electricity to the towns of Brigus, Cupids, Clarke's Beach, Port de Grave, Bay Roberts, Spaniard's Bay and other towns and villages near thereto. The Act of 1913 included the following exempting provisions,

" 20. All plant, machinery, rolling stock, implements, apparatus, tools, utensils and materials necessary for the original construction of the said lighting, heating, power, and tramway systems and extensions thereof shall be admitted into the Colony free of duty.

" 21. The Company shall be exempted from all rates, taxes and assessments for the period of fifty years from the date of the passage of this Act."

The exclusive right and franchise conferred by the Act of 1913 was also limited to a period of fifty years.

On the 11th March, 1914, two Acts were passed, as the result of which the appellant, on the 30th June, 1914, acquired the whole undertaking of the Conception Bay Electric Company, and have since carried it on. The first of these Acts amended the Act of 1913 as follows,

" 1. Section 9 of the Act 3 George V, Cap. 4, is hereby amended by adding the following words at the end of the said section:—

The Company is also hereby authorized and empowered to sell, lease or dispose of the undertaking of the Company or any part thereof, for such consideration as the Company may think fit."

The second of these Acts amended the Act of 1902 as follows,

" 1. Section 10 of the Act 2 Edward VII, Cap. 8, is hereby amended by adding the following words at the end of said section:—

The said Company shall also have power to acquire and undertake the whole or any part of the business, property, undertaking and liabilities of any person or company carrying on or formed to carry on any business which this Company is authorized to carry on whether in the aforesaid towns or not."

In December, 1920, the appellant Company applied for registration under part V of the Companies Act, and on the 3rd January, 1921, the Company was registered under its present name of "United Towns Electric Company Limited". Under the Companies Act as amended by the Companies Act, 1920, a company so registering remains the same legal entity as before, and under section 246 (as substituted by the Act of 1920) all property, franchises, privileges and exemptions vest in and continue to belong to the company as so registered to the same extent as they were vested in and enjoyed by the company prior to such registration.

In 1924, under the United Towns Electric Company Limited Act (hereinafter called "the Act of 1924") the appellant was empowered to extend its operations to certain other districts of Newfoundland. It is unnecessary for their Lordships to deal separately with the provisions of this Act, as counsel for the respondent admitted, at the hearing of the appeal, that this undertaking should be treated as an extension of the appellant's undertaking under the Act of 1902, and would be ruled by the decision on the Act of 1902.

In the year 1929 the appellant was authorized by the Electric Power Service (Burin) Act (hereinafter called "the Act of 1929") to operate an electric light and power system and telephone system in the Burin Peninsula, which a previous company called "People's Electric Company Limited" had been empowered to carry out but had failed to do. The Act of 1929 contained the following exempting provisions,

" 10. The electric light and power system and the telephone system operated and carried on by the United Towns Electric Company Limited, under the provisions of this Act shall be exempted from all taxes including the annual tax on telephones for the period of ten years from the date of the passing of this Act.

" 15. There shall be admitted into the Colony free of duty and sales tax the following articles for the original construction of the Company's electrical and telephone systems hereunder and for any extensions thereof but nothing new in substitution for old, that is to say . . . (Then follows a list of articles) . . . Provided that nothing herein shall exempt any article from duty if at the time of importation it shall be manufactured and available within this Colony nor shall exempt hand-tools of any description."

The assessments to income tax here in question cover the profits of the operations carried on by the appellant under the Acts of 1902, 1924 and 1929 and of the undertaking acquired by the appellant from the Conception Bay Company, whose powers rested on the Act of 1913.

At the hearing before their Lordships the appellant claimed exemption from income tax by virtue of section 30 of the Act of 1902 in respect of the profits of all its undertakings except that part which was carried on under the powers conferred by the Act of 1929, in respect of which the appellant claimed exemption by virtue of section 10 of the Act of 1929. As regards the Conception Bay undertaking acquired from the Conception Bay Company in 1914, the appellant did not claim to have the benefit of section 21 of the Act of 1913, but maintained that by virtue of the Act of 1902, as amended by the Act of 1914, the Conception Bay undertaking, on its acquisition, became part of the appellant's undertaking under the Act of 1902. As already stated, the respondent conceded that the undertaking authorized by the Act of 1924 fell to be regarded as part of the 1902 undertaking.

The respondent maintained that the decision of the Supreme Court that the term "taxation", as used in section 30 of the Act of 1902 and section 10 of the Act of 1929 must refer to local taxation only and could not include income tax, was correct.

The Supreme Court appear to have based their decision on the terms of section 30 of the Act of 1902, which they held to show that the term "taxation" was limited to taxes *ejusdem generis* with water rates, which are excepted in the earlier part of the sentence, and which are payable by statute to water companies and form no part of the revenue of the colony; that the Act of 1902 was local in its object and the work it authorised, and the water rates referred to concerned a particular locality; and that, accordingly, the immunity was limited to further taxation of a local character similar to the water rates specially named. As regards sec-

tion 10 of the Act of 1929, they held that it must be similarly construed, as, if the appellant's construction of section 30 of the Act of 1902 were correct, there would have been no need for the special exemption for ten years provided under the Act of 1929.

Their Lordships regret that they are unable to agree with the reasoning of the Supreme Court. In their opinion, there is no room for the application of the principle of *ejusdem generis* in the absence of any mention of a genus, since the mention of a single species, e.g. water rates, does not constitute a genus, and, as regards the Act of 1929, section 10, if the appellant's construction of it is accepted, would modify section 30 of the Act of 1902 by limiting the period of immunity in the case of the undertaking authorized by the Act of 1929.

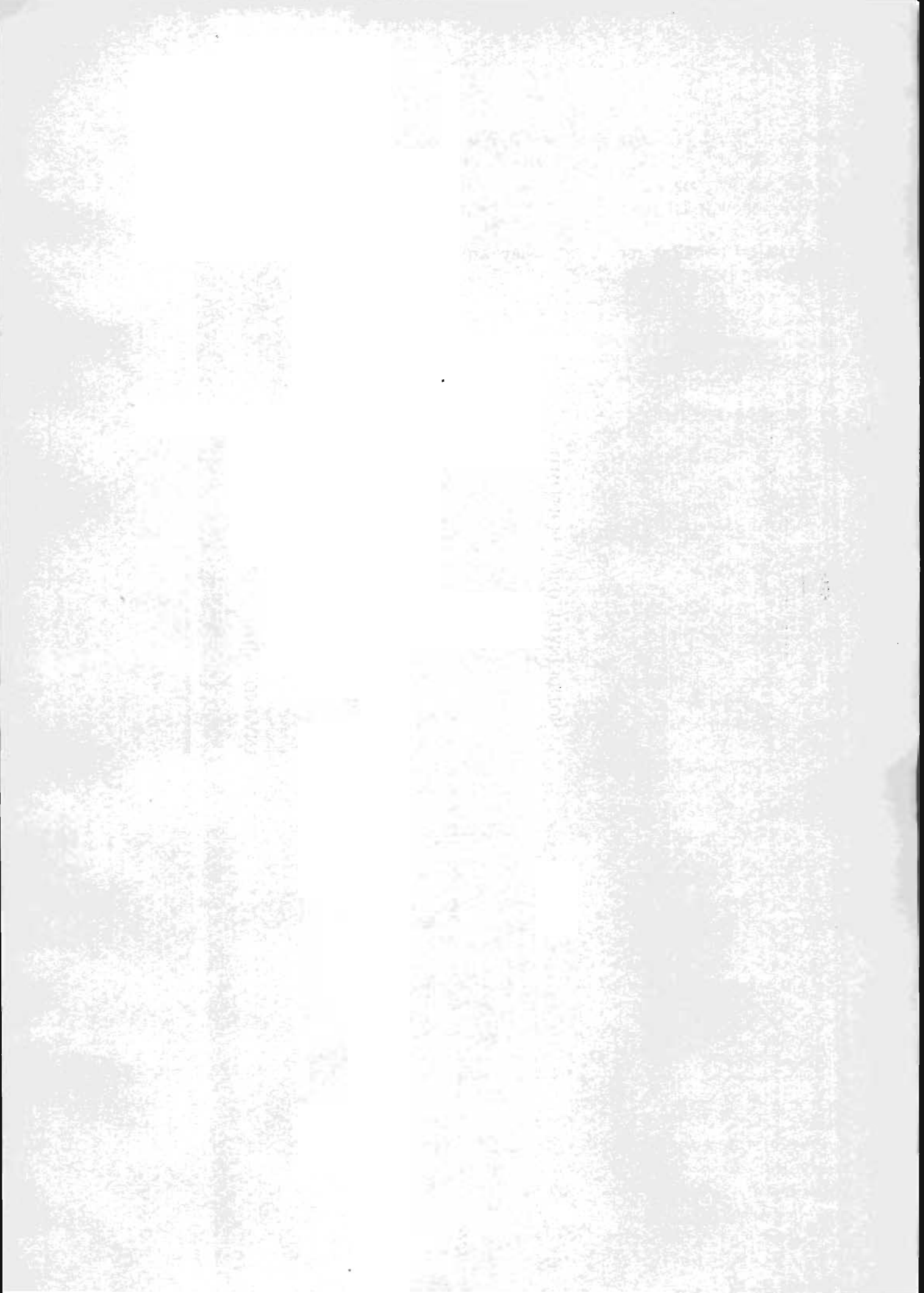
Apart from these reasons, which influenced the Supreme Court but which do not commend themselves to their Lordships, their Lordships are unable to find any adequate ground for limiting the general and ordinary meaning of the term "taxation", which includes national taxation. It is true that there was no direct taxation in the colony until 1917, when a business profits tax was imposed, followed in 1918 by an income war tax, which was continued until 1925, its name being changed to income tax in 1922. After an interval of four years, the present Income Tax Act was passed in 1929, and it contains no provision which would operate to deprive the appellant of the benefit of its previous statutory exemptions.

It is to be remembered that the Act of 1902 was declared to be a public Act, and the exemption was granted by the national taxing authority, and there is no reason, apart from any qualifying context, to restrict the meaning of the term taxation to taxes then existing, as was stated by Lord Haldane in *Associated Newspapers Limited v. City of London Corporation* [1916] 2 A.C. 429, at p. 442,

"I think that from the context and purpose with which it is introduced the expression 'taxes' means local and not imperial taxes, and that the exemption is confined to these. But subject to this it appears to me that the words used by the Legislature are not ambiguous. They occur in a public Act, and extend in terms to 'all taxes and assessments whatsoever', and the natural meaning seems to me to include local taxes and assessments, whether then existing or thereafter to be imposed. No doubt the Legislature could, by a subsequent Act, have repealed or altered the exemption."

In the present case there is, in their Lordships' opinion, nothing in the context or purpose of the Act which would confine the exemption to local taxes, but Lord Haldane's statement of the natural meaning of the term is equally applicable. (*Pole-Carew v. Craddock* [1920] 3 K.B., 109, per Lord Sterndale M.R., at p. 123.)

Their Lordships are therefore of opinion that the judgment of the Supreme Court should be set aside, that the first question in the special case should be answered in the negative as regards the assessments appealed against, and that these assessments should be disallowed. They will humbly advise His Majesty accordingly. The appellant will have its costs in the Supreme Court and the costs of this appeal.



In the Privy Council

UNITED TOWNS ELECTRIC COMPANY
LIMITED

v.

HIS MAJESTY'S ATTORNEY GENERAL

DELIVERED BY LORD THANKERTON

Printed by His Majesty's Stationery Office Press,
POCOCK STREET, S.E.1.

1939