Privy Council Appeal No. 124 of 1913.

The United Buildings Corporation, Limited - *Appellants,*

v.

The City of Vancouver - - - *Respondents.*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH JUNE 1914.

Present at the Hearing:

LORD MOULTON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.

[*Delivered by* LORD SUMNER.]

On 15th July 1912 the Corporation of the City of Vancouver enacted a by-law for the diversion of a lane in that City, which was a public highway. Part of it, which led into one thoroughfare, was stopped up and by giving it a right-angled turn the lane was made to lead into another instead. The Corporation made provision for an extra space for vehicles to turn in at the corner. Whether that space was in fact sufficient, and whether the change itself hampered the preservation of the adjacent buildings in case of fire, are questions which do not arise before this Board. If the Corporation had power to pass the by-law at all, it had authority to determine such questions (*Haggerty* v. *Victoria*, 4 B.C.R., at p. 164).

[51] J. 341. 90.—6/1914. E. & S.

The alteration in the lane was made at the instance and on the petition of the Hudson's Bay Company, whose building-land lay on both sides of the part which was closed. They did not seek to assist the traffic of the locality or to promote the health of the neighbourhood. They wished to obtain a building lease of the closed part of the lane, and so to be able to erect a long unbroken block of buildings instead of two smaller ones. The Corporation drove a bargain with the Hudson's Bay Company, and it has not been contended that the bargain did not secure for the City and the public an ample *quid pro quo*. Two points only in that bargain need be referred to. It was known, firstly, that there was opposition to the proposed by-law, and the Corporation took an indemnity from the Hudson's Bay Company "against any actions or suits "which may be brought against the City by "reason of the passing of the by-law closing "said lane and stopping up thereof." Secondly, the Corporation, having discharged the closed portion of the lane from the public right of highway, leased it to the Company at one dollar per annum, without taking any covenant to build on it, for twenty-five years, the longest term within the Corporation's leasing powers exercisable without the express assent of the ratepayers, signified by popular vote (section 8 of the Act of 1907 amending the Vancouver Incorporation Act, 1900).

In enacting the by-law the Corporation acted under the Vancouver Incorporation Act, 1900, section 125, sub-section 52. It has been argued that the transaction was one which amounted to giving a "bonus" to the Hudson's Bay Company within section 194 of the Municipal Act, 1906, sub-sections 171 to 184 of the Vancouver Act not applying to this transaction. If so, the by-law enacted required for its validity, the assent

of not less than " three-fifths in number of the electors " voting upon it, when duly submitted to the " electors of the municipality " before its " final passage." There is nothing in the evidence to prove any motive for avoiding reference to the electorate, and no evidence, nor indeed any suggestion, of corruption against members of the Corporation personally.

Strong opposition to the Hudson's Bay Company's petition was offered by the now appellants, who, as owners of property abutting on the unclosed portion of the lane, considered their premises to be injuriously affected. On the other hand, the petition had the support of an actual majority of the owners of property in the lane. The appellants as ratepayers obtained a rule nisi calling on the Corporation to show cause why the by-law should not be quashed, on the grounds that the closing of the lane was not in the interest of the public but was solely in the interest of the Hudson's Bay Company, that it worked hardship to the ratepayers, and was *ultra vires*. Evidence on affidavit was filed, and eventually Clement, J., discharged the rule. An appeal was taken to the Court of Appeal of the Province of British Columbia, and the members of that Court being evenly divided in opinion, it stood dismissed, and leave was given to appeal to their Lordships' Board.

The grounds taken before their Lordships have been twofold: First, it was said that there was no power to enact this by-law under section 125 (52) because it was not a matter of " public " health " ; secondly, it was said that the exercise of the power, if any, was not in good faith, but was actuated by motives, and resorted to for purposes, other than those which the section impliedly requires. The latter ground may be taken first.

The direct evidence is that of three aldermen,

members of the Board of Works, who swear that the Board, before whom the matter came, decided unanimously, considering the request a reasonable one and thinking that, in the interests of the City it ought to be granted, in view of the class of building, which the Hudson's Bay Company proposed to erect, and of the facilities offered in return to the other owners in the block in question. Each added his opinion that the change improved the access of light to buildings in the lane, and did not injuriously affect any of the owners in the other lots. To the facts thus deposed to there was no contradiction in the evidence filed, though there was evidence that the opposite opinion was entertained by other persons. The statement of these aldermen of course is not conclusive, but it is entitled to very serious consideration. No fact was urged against it except the character of the transaction itself. The personal credit of these deponents was not impugned at all. There can be no doubt on the facts that the site leased will be built on by the lessees in their own obvious interest, though they have not covenanted to do so. It is easy, especially for those who conceive themselves to be sufferers by it, to suspect and to suggest and even to argue with some plausibility that such a transaction cannot have been carried through without some improper or sinister motive on the part of those members of the Corporation who voted for it, in this case all who were voting: and, since opinions differed on this question in the Court below, their Lordships freely recognise that it might bear one aspect or the other, but judging it, as they must do, upon a judicial survey of the whole proved materials, with the experience of men of the world and the full persuasion that such a charge must be proved by those who make it, their Lordships are unable to differ from the opinion of those members of

the Court below, who held that the transaction was free from impropriety or bad faith.

Two grounds were urged for the contention that there was no jurisdiction to enact the by-law. The first was that sub-section 52 is to be limited to such acts named therein as are done for purposes of public health. This is inferred from the heading of the fasciculus of sub-sections, to which sub-section 52 belongs, and also from the character of the acts named in the other sub-sections within the fasciculus as well as in the sub-section itself. The second ground is that the " public health powers " and the " bonus " powers of the Corporation must be deemed to be mutually exclusive, especially as the first may be exercised without any ratification by a popular vote, while the second requires it. Hence it is said that as the transaction fell within the " bonus powers " the sub-section conferring public health powers cannot be construed so as to cover it.

The material words of section 125 and sub-section 52 are as follows :—

Section 125. " The Council may from time to time pass " alter and repeal By-laws :—

* * * * *

Public Health.

* * * * *

" (52) For stopping up . . . lanes . . . within " ' the jurisdiction of the Council.' "

Other matters dealt with in this sub-section are :—

" ' Making . . . improving, repairing . . . " ' altering . . . sewers, watercourses . . . " ' streets, squares . . . taking or using any land in " ' any way necessary or convenient for the said purposes ; " ' conducting the drains and sewers beyond the limits of " ' the said city for fertilizing purposes . . . and for " ' entering upon . . . any land in any way necessary " ' or convenient for the said purpose, and repairing and " ' maintaining all bridges.' "

That the titles, which a statute prefixes to parts of the Act, may be looked at as aids to the

interpretation of the language of such parts is well settled, but the assistance to be derived from such consideration varies very much. The title here is " Public Health," an expression often used very comprehensively and often including much that is only concerned with public welfare. Examination of the specific matters enumerated in this fasciculus of sub-sections shows that the scope of this part of the Act is general. They range from prescribing " the duties of health officers and scavengers " (35), and " filling or closing " any waterclosets, privies . . . or cesspools (50), to the repair of bridges (52), and the regulation of the weight of bread (55) ; from " ordering the removal of laundries from " any particular locality where, in the opinion of " the Council, such laundries are . . . an " eyesore to the locality " (40), to " preventing " the encumbering by . . . vehicles, vessels, " or other means of any . . . river or water " or any road . . . bridge, or other com- " munication " (41), and to declaring " any . . . " structure . . . dangerous to the public " safety " . . . and ordering " that the same shall be removed " (48). It is not impossible that these last-mentioned matters may have some connection, though remote, with the physical and moral health of the community, but they seem to have as little to do with public health in this sense as with eugenics. A similar observation arises on sub-sections 21 to 33 which are headed Public Morals and include the regulation of bowling alleys (29), and the prohibition of the sale of cigarettes to children (21), on the one hand, and on the other the prevention of brothel keeping (26), and indecent exposure of the person, as also on sub-sections 63 to 77, which under the title of Markets extend from light weight and short measure (76), to forestalling and regrating (68). The question is one of

construction only, and their Lordships agree with Martin, J. A., in the Court below that section 125 has been drawn generally so as to combine together various powers many of which are of analogous character, but without adhering to strict classification.

There are various minor difficulties in the way of those who seek to quash this by-law, which may be dismissed shortly. So far as the by-law in question stops up part of the lane and diverts the rest it was made honestly within the powers given by section 125 (52). Only by introducing the resolution to lease the disused part to the Hudson's Bay Company, is any semblance produced of giving "any bonus," and this has been carried out by the actual grant of a subsisting lease. The procedure for quashing a by-law (sections 127–132), and the application and rule nisi in the actual case do not extend to setting aside the lease. Their Lordships think that this point of form should not be passed over. Further, there is a separate power of leasing under the principal Vancouver Act of 1900, section 125, sub-section (215), and section 8 of the amending Act of 1907. This power of leasing lanes or portions of lanes, if the lease is for a period not exceeding 25 years, may be exercised without the assent of the electors. It applies to portions of lanes disused because the thoroughfare is stopped, and cannot well apply to them till it is stopped. It is true that the power to lease for 25 years is contained in a proviso upon the older sub-section of 1900, but it would be an untenably narrow construction of that sub-section to say that the power of leasing is confined to such property as has been obtained under a by-law made by the Corporation; it is enough that it be property at one time required for the use of the Corporation, and no longer so required.

The remaining argument is one of great public importance, but the facts do not raise it in the present case in a shape that involves any new decision upon it. Where the competent legislature has imposed on a municipal corporation such a condition, either precedent or subsequent, to the exercise of its powers as the sanction of a vote of the ratepayers, it is essential that no elastic construction should be placed upon a sub-section, which would enable the local authority to evade the restrictions of the statute. (*See re* Barclay, 12 U.C.Q.B. 92, per Sir J. B. Robinson, and *Scott* v. *Tilsonburg*, 13 Ont., Ap. Rep. 237, per Hagarty, C.J.). But though the operation of a by-law benefits one or more persons more than others, it does not follow that by enacting it a corporation must be taken to "give any bonus" within the Municipal Act, 1906, section 194, nor can a by-law be said to be outside the powers conferred by section 125 of the Vancouver Act, 1900, merely because steps taken in the public interest are accompanied by benefit specifically accruing to private persons. (*Re* Inglis and Toronto, 9 Ont. L.R. 562). If no one could benefit by this by-law but the Hudson's Bay Company, and the whole advantage to the public at large, or to other members of the public was to be found in the consideration moving from the Hudson's Bay Companyto the Corporation, the matter might well be otherwise. Here, however, the by-law was supported by a majority of property owners affected, who are not shown to have had any interest but that which consisted in the alteration of the lane itself, and there is uncontradicted evidence of a belief on the part of those or some of those enacting the by-law that the alteration in the lane was a public though a local improvement in facilitating the access of light. This last fact alone is enough to distinguish the cases of *Peck* v. *Galt* (1881), (46 U.C.Q.B. 211), *Morton*

v. *St. Thomas* (1881), (6 O.A.R. 323), *Pells* v. *Boswell* (1885), 8 Ont. 680), and *Waterous* v. *Brantford* (2 O.W.R. 897, 4 O.W.R. 355) which are in some respects similar. There is no sufficient juridical reason for rejecting this evidence. Their Lordships cannot speculate about the unascertainable motives of unknown persons. They must act on the evidence as it stands. To those familiar with the *locus in quo* it may seem improbable, or even impossible, that the advantages to be derived from the change in the lane itself were the reason for enacting the by-law, but as the plaintiffs shaped and left their case, it is quite consistent with the possibility that the mere alteration in the lane itself was, partly and even largely, for the general benefit and was an improvement in the interior communications of the City for the benefit of the public health in a wide sense of the term. This being so, and no bad faith or improper conduct being shown, their Lordships are unable to say that the decision of the Court below was wrong, and will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

THE UNITED BUILDINGS CORPORATION, LIMITED,

v.

THE CITY OF VANCOUVER.

DELIVERED BY LORD SUMNER.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1914.