Privy Council Appeal No. 95 of 1919.

The City of Montreal - - - - - - - *Appellants*

v.

La Corporation du Collège Sainte Marie à Montréal - - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH AUGUST, 1920.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD DUNEDIN.
LORD ATKINSON.
MR. JUSTICE DUFF.

[*Delivered by* MR. JUSTICE DUFF.]

The questions in controversy on this appeal concern the legality and effect of a resolution of the Municipal Council of the town of Maisonneuve of the 26th January, 1898, by which the Council professed to fix the amount payable annually as taxes for thirty years by the respondents, in respect of certain lands within the municipality, at the sum of $100. The town of Maisonneuve by its action prayed a declaration that the resolution was void, and claimed the sum of $7,628 alleged to be due as arrears of taxes upon this property. The respondents having confessed judgment for $2,825, admitted to be due in part under the terms of the resolution of 1898, and in part for arrears of school taxes in respect of which they preferred no claim for exemption, the trial Judge, in respect of the residue of the claim, dismissed the plaintiffs' action, and this judgment was unanimously affirmed by the Court of King's Bench. Maisonneuve has since the commencement of the action been incorporated in the city of Montreal, and the last-mentioned Corporation appeals.

The property in question was acquired by the respondents in 1872 as a country resort for the pupils and professors of the College, which was situated in the heart of Montreal: and

although since that time the locality in which the property is situated has lost its rural character, the property has always been used by the respondents as a place of recreation for its pupils and professors. In 1898, at the time the resolution was passed, the property was in the charge of a person described by the respondents as caretaker, who had a lease of it, at an annual rent of $100, under which he was entitled to use for himself and his family part of the residence, the greater part of which was reserved for the accommodation of the teachers and pupils, the lessee being obliged to perform for them the duties of housekeeper and cook. The lessee was entitled to, and did, cultivate the land and retain the produce, but a considerable part of it was reserved as a play-ground for the pupils, who were accustomed to visit it once or twice a week during the College term.

The respondents having disputed their liability to taxation, on the ground that the property was exempt under the provisions of Art. 25 of 61 Vict. cap. 57 (the charter of the town of Maisonneuve), an arrangement was arrived at, and the resolution now impeached was the result of that arrangement.

The validity of the resolution is maintained upon the ground that it embodies an agreement between the Corporation and the respondents falling within the operation of 61 Vict. cap. 57 s. 26, which is in the following words :—

> " The Council may, by resolution, when it deems expedient in the interest of the town, enter into any agreement whatsoever with one or more proprietors, either to regulate the manner of valuing his or their real estate, or establish the amount at which the same shall be estimated, or to regulate the mode of taxing real estate, for ordinary or special taxes, or determining the amount at which it shall be taxed for a specified period . . . It may also, by resolution, determine the delay and manner of collecting all special taxes. . . . The same right is granted to the school commissioners and to the trustees of the dissentient schools for the town of Maisonneuve."

On behalf of the appellants it is contended, first, that this resolution is merely a unilateral declaration, and that the evidence fails to disclose the existence of any agreement obliging the respondents to observe the conditions of it ; and, second, that the lands in question being manifestly taxable, the resolution must be regarded as an attempt to grant an exemption in the interests of the respondents exclusively, and not as an exercise of the power vested in the Council by the statute, which is a power to do certain things only when such things are deemed by the Council to be in the interests of the municipality.

Their Lordships are not disposed to differ from the view pressed upon them that an agreement in order to receive effect under the statute must be very clearly made out ; such an agreement, if effective, establishes a privilege in respect of taxation, and the principle is not only well settled, but rests upon obvious considerations, that those who advance a claim to special treatment in such matters must show that the privilege invoked has unquestionably been created.

But their Lordships think that in this case the agreement alleged by the respondents has been proved beyond controversy. Evidence was given in cross-examination by the notary, Ecrement, a witness called by the appellants, who was secretary of the town in 1898, when the resolution was passed, in these words :—

" Le Juge :

" D. A quelle propos y avait-il des discussions entre les parties, était-ce pour savoir si la corporation défenderesse devait payer des taxes ?

" R. Oui, monsieur.

" D. La défenderesse prétendait qu'elle ne devait pas payer ?

" R. Oui, monsieur.

" D. Et le conseil prétendait qu'elle devait payer ?

" R. Oui, monsieur.

" D. Et il a eu un arrangement qui est la résolution ?

" R. Oui, monsieur.

" Me. St. Jacques, C.R., procureur de la défenderesse :

" D. Cette divergence d'opinion existait depuis plusieurs années ?

" R. Oui, monsieur.

" D. Depuis 1898 jusqu'en 1906, la défenderesse a toujours payé, tous les ans, la somme de $100, conformément à la résolution du mois de janvier 1898 ?

" R. Oui, monsieur.

" D. Et en 1906, après la passation de cette résolution rescindant celle de 1898, la défenderesse a continué à offrir, tous les ans, la somme de $100 ?

" R. Je ne sais pas si c'était tous les ans, mais quelques années.

" Le juge :

" D. Et vous refusiez ?

" R. Nous avons toujours refusé.

" D. La première année elle vous l'a offerte et vous avez refusé ?

" R. Oui, monsieur."

This evidence, which was not contradicted or questioned, seems to establish that the resolution was intended to embody, and did embody, an agreement between the appellants and the respondents, and that it was accepted and acted upon by both parties as evidencing such an agreement for a period of eight years. In these circumstances there seems to be little ground for dispute that the agreement alleged has been strictly and conclusively established.

It is perhaps unnecessary to add that the respondents' rights under this agreement could not be affected by the subsequent revocation of the resolution in 1906 without their consent.

Coming to the other contention upon which the appellants rely, their Lordships have no doubt that there were solid reasons which might properly satisfy the Council that the claim of the respondents was one which had not a little chance of success in the Courts. The relevant statutory provision (s. 25 of the charter) is in these words :—

" The following property is not liable to taxation :—

* * * * * * *

" (3) That belonging to *Fabriques* or to religious, charitable or educational institutions or corporations or occupied by such Fabriques or corporations, and not owned by them solely for the purpose of deriving a revenue therefrom."

The facts bearing upon the nature of the occupation of the property have already been mentioned. One of the learned Judges of the Court of King's Bench, Mr. Justice Pelletier, drew from those facts the conclusion that the property was exempt from taxation by force of s. 25, because it was not held "*solely* for the purpose of deriving a revenue therefrom." Their Lordships do not wish to be understood as disagreeing with this view; but they consider it unnecessary to express any opinion upon the point. The fact, nevertheless, that Mr. Justice Pelletier has arrived at this conclusion, in itself presents, of course, a formidable objection to maintaining the appeal on the ground that such a view is manifestly untenable; and their Lordships agree with the unanimous opinion of the Judges in Quebec that the liability of the respondents to taxation was at least very doubtful, and that there is nothing in the character of the arrangement made or in the evidence adduced to support a suggestion that the council in entering upon it was not really acting in the interests of the municipality, but abusing its powers by exercising them for an ulterior purpose.

The decision of this Board in *The Seminary of Quebec* v. *Limoilu* (1899 A.C. 288) proceeded upon an entirely different state of facts, the claim for exemption under examination in that case being in respect of property which was in the exclusive occupation of a tenant and was used by the owners for no other purpose than that of extracting a pecuniary profit from it by way of rent, and that decision has consequently no application here.

The appellants also argue that the Legislature cannot be supposed to have intended when enacting s. 26 of 61 Vict. cap. 57, to endow the Council with unlimited discretion as to the duration of any privilege granted under that enactment; and the limitation of twenty years to which exemptions granted in respect of "industrial" enterprises under Art. 4559 R.S.Q., 1888, are subject, is referred to as something through which it is contended the Courts ought to discover an intention on the part of the Legislature to restrict in like manner the duration of privileges acquired under s. 26. Article 4559 is strictly limited in its application to the class of cases thereby designated, which does not include privileges arising under s. 26; and in truth their Lordships are invited, by this argument, to amend or supplement these enactments rather than to construe them.

Their Lordships will humbly advise His Majesty that the appeal ought to be dismissed with costs.

In the Privy Council.

THE CITY OF MONTREAL

v.

LA CORPORATION DU COLLÈGE SAINTE MARIE
À MONTRÉAL.

DELIVERED BY MR. JUSTICE DUFF.

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