Privy Council Appeal No. 115 of 1922.

Shannon Realties, Limited - - - - - - *Appellants*

v.

The Town of St. Michel - - - - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

Privy Council Appeal No. 55 of 1923.

Napoleon Pesant and others - - - - - - *Appellants*

v.

The Town of St. Michel and another - - - - *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 22ND NOVEMBER, 1923.

Present at the Hearing:

VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD ATKINSON.
LORD SHAW.
LORD SUMNER.

[*Delivered by* LORD SHAW.]

The true question in these appeals has reference to a provision in the Code of Civil Procedure for Quebec (60 Vict., c. 48, as re-enacted by 10 Geo. V, c. 79). That provision is Art. 50, and is to the following effect:—

"Excepting the Court of King's Bench, all courts, circuit judges and magistrates, and all other persons and bodies politic and corporate, within

the Province, are subject to the superintending and reforming power, order and control of the Superior Court and of the judges thereof in such manner and form as by law provided."

The appellants maintained that they were entitled to certain remedies under that section. The respondents answered that the appellants are precluded from having recourse to it, there being provisions at law for regular appeal which were open to them, and of which they had not availed themselves. The respondents further maintained that in any view recourse should not be had to Art. 50 except in the case where the proceedings of valuation challenged, performed by the Corporation of the Town of St. Michel, or its valuations had been tainted by fraud.

The narrative of facts and statutory provisions, now to be given, is confined to those which are relevant to the true issue in the case as above stated, viz., that upon the scope and application of Art. 50.

La Ville de St. Michel was erected in 1915 by an Act passed by the Legislature of Quebec, into a Town Corporation to be governed by the Cities and Towns Act.

It is in the neighbourhood of Montreal; and it appears to be clear that in or about the years 1913–14 there were high expectations of ground (then being held as farm land) rising greatly in value on account of its suitability as building sites.

In May, 1914, the appellants, a company dealing in real estate, acquired a tract of land in the municipality measuring 84 arpents, sub-divided into over 900 building plots. The price paid was about $2,500 per arpent, and in that year (1914) 6 arpents were sold at a rate of about $3,000 per arpent. The valuation put in the years 1915 and 1916 upon the land was $6,000 per acre of capital value. In 1917 this valuation was repeated, and it was appealed against to the Circuit Court under the provisions to be afterwards cited, and was reduced to $500.

Two circumstances thereafter remained unexplained in these proceedings. First, that in the succeeding year the valuation was again increased to $6,000; and second, that, notwithstanding their conspicuous success in the year 1917, in reducing that large figure to one-twelfth of the amount, viz., $500, the appellants did not appeal against that valuation of $6,000. It was allowed to stand without legal challenge, and it regulated the finance and taxation of the town for the year 1918. Instead of lodging an appeal they took these proceedings. These began on the 25th February, 1920, when the plaintiffs lodged their declaration with the Superior Court of Quebec, "District of Montreal," concluding with a demand that the valuation and collection rolls for the years 1913, 1914, 1915, 1916, 1917 and 1919 should be declared to be, and set aside as, irregular and null and *ultra vires*.

It seems fairly clear that if a challenge of this kind, in all its breadth, was sanctioned, it would make municipal finance

substantially uncertain, and would be productive of the greatest confusion. Whatever may have been the conduct of the municipality and its officers, it is not to be wondered at that the Courts below should have had serious difficulty in dealing with a legal demand of so extensive a scope.

By the Cities and Towns Act, 1909, Title XI, Cap. I (Art. 5696) it is provided as follows:—

> "The assessors shall each year, at the time and in the manner ordered by the council, assess the taxable property of the municipality according to its real value."

By Art. 5705 it is provided that the assessors shall deposit the valuation roll in the office of the Council, and that the roll shall remain open for examination for 30 days after its deposit.

Art. 5706 is as follows:—

> "During such time, any person who, personally or as representing another person, deems himself aggrieved by the roll as drawn up, may appeal therefrom to the Council, by giving for that purpose a written notice to the clerk stating the grounds of his complaint."

Article 5715 is as follows:—

> "An appeal shall lie to the Circuit Court of the county or of the district or to the magistrate's court of the district:—
>
> 1. From any decision of the Council upon a complaint under Article 5706, within thirty days from such decision; or
> 2. Whenever the Council has neglected or refused to take cognizance of any written complaint made in virtue of Article 5706, within thirty days after the expiration of the delay within which it might have taken cognizance thereof."

Subsequent provisions are made for the hearing of the case and the requisite procedure.

It was under these sections 5706 and 5715 that the appellants proceeded in the year 1917, when they were successful in obtaining the reduction of the valuation from $6,000 to $500.

Art. 5724 provides for the case of an appellant who neglects effectually to prosecute the appeal. It is in the following terms:—

> "Every appellant who neglects effectually to prosecute the appeal shall be deemed to have abandoned the same, and the court, on application by the respondent, may declare all the rights and claims founded on the said appeal forfeited with costs in favour of the respondent and order the transmission of the record to the municipality."

By Art. 5730 it is provided that the Council may levy a tax of 2 per cent. of the real value as shown on the valuation roll, and by Section 5731 certain provisions were made as to farm lands. By 5 Geo. V. cap. 109, it was, however, replaced as follows:—

> "All land under cultivation or farmed or used as pasture for live stock, as well as all uncleared land or wood lots within the municipality, shall be taxed, for a term of ten years, to an amount proportionate to one-fourth of its value as entered on the valuation roll, upon the condition that

such proportionate amount shall not exceed one hundred and fifty dollars per acre, including the buildings thereon constructed."

One circumstance may be mentioned with regard to the last-named section, and the subject may then be passed from. It is established beyond all doubt that the land in question during all the years in question was in the occupation of a farmer named Scott. When the anticipation of the year 1914, as to the development of building enterprise, failed, certain pipeage had in fact been put underground and certain roads had been laid out or partially made, but these roads became overgrown and the pasturing and farming went on as before. It is, however, uncertain from the proceedings whether the respondents, the municipality, had treated or are prepared to treat this land as farm land in so far as having the statutory limitation of taxation under that category applied. What is the reason for this apparent failure to tax land under the express limitations of that statute does not appear, but the question as will be afterwards shown does not directly arise under these proceedings.

On the assumption that there is appealable matter, then it appears to their Lordships to be clear that so far as proceedings by way of appeal are concerned the specifications of time must be respected. For an appeal to the Council a time of 30 days is given to the ratepayer, during which time the roll remains open for examination; and for an appeal to the Circuit Court, a further 30 days from the date of the Council's decision, or from the expiration of the time in which it might have taken cognizance of the appeal. These limits of time appear to their Lordships to be imperative; and the point has already been alluded to as to the importance of definite and final ascertainment of the state of the valuation roll each year as the basis both of individual taxation and municipal finance. This is secured by these express provisions and time limitations.

In all the years for which the valuation is challenged, viz., 1913–19, with the exception already mentioned of 1918, no appeal was entered nor were any other legal proceedings initiated. The valuation, taxation and finance of la ville de St. Michel and its ratepayers were accordingly regulated by the valuation which had thus attained statutory finality.

The question that remains accordingly is, whether Art. 50 of the Code of Civil Procedure can now be invoked so as to have both the valuation rolls and the collection rolls for three past years declared in the language of this plaint to be and to have always been illegal, irregular and null, *ultra vires*, etc. This is a declaration of complete nullity—that is to say, nullity in every year and as to every taxpayer in every year. Not only the nature of this demand, but the breadth of it have caused great differences of judicial opinion in the Courts below. Allard, J., illustrates the points thus:—

"Il est à présumer que tous les contribuables, moins la demanderesse, ont payé leurs taxes basées sur l'évaluation portée aux rôles attaqués.

La preuve ne révèle pas que les propriétaires d'autres terres, anciennement en culture et qui ont été subdivisées en lots à bâtir, considèrent leur terre actuellement encore comme terre en culture, comme le fait la demanderesse. Rien ne prouve que ces propriétaires de lots subdivisés, autres que les demandeurs, ne sont pas satisfaits de l'évaluation que les estimateurs ont faite de leurs terres. Et l'on nous demande d'annuler les rôles faits en 1915, 1916, 1918 et 1919—rôles évaluant toutes les propriétés de la ville St. Michel."

The same learned Judge subsequently adds :—

" Je ne puis admettre, qu'avec le dossier, tel que fait, cette Cour soit justifiée d'annuler les rôles de perception quant à tous les autres habitants de la municipalité. Il est à présumer, et même je pourrais dire certain, que tous les municipes de St. Michel, y compris même les propriétaires de terrains subdivisés, à l'exception des demandeurs, ont payé les taxes qui leur sont imposées par les rôles attaqués. Il n'y a pas de doute, non plus, que les argents ainsi encaissés ont été dépensés par le Conseil pour frais d'administration et autres. Et voilà, que par notre décision nous dirions à ces gens : Vous avez payé vos taxes sans vous plaindre, nous n'avons pas de preuve que vos propriétés sont surévaluées, vous ne vous êtes jamais plaints, vous avez acceptés comme juste et raisonnable l'évaluation de vos propriétés respectives, mais la demanderesse ayant prouvé que sa terre est encore terre en culture et que pour cette raison le Conseil municipal l'a imposé à un montant trop élevé, nous allons annuler tous les rôles de perception pour 1915, 1916, 1918 et 1919. Ce serait, à mon avis jeter cette municipalité dans le chaos."

and he concludes by declining a general annulment of the rolls, by favouring a remedy limited to an annulment of the entries applicable to the respondent, but apparently going back in his case over 4 past years.

It may illustrate the difference of opinion to cite Martin, J., as follows :—

" It was urged that we ought not to annul these rolls as to persons and rate-payers not contesting and who might have paid the taxes imposed upon them thereunder, but if the rolls are illegal and *ultra vires*, the powers of the corporation, they must be set aside regardless of consequences, and if their legality is limited to respondent's property, it would create inequality of taxation."

How shall such a wide difference be settled ? Where the words of a statute are clear they must, of course, be followed ; but, in their Lordships' opinion, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating : and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

In this view it is of cardinal importance to consider what is the remedy provided for the situation in which a ratepayer or body of ratepayers has been put by a valuation roll which is said to be illegal and invalid by reason either of error in its particular items, or by reason of fundamental error in principle. Once such a roll appears, the statute steps in to provide a remedy to " every person who, personally or as representing another person,

deems himself aggrieved by the roll as drawn up," and the appeal is to state "the grounds of his complaint." What the Act provides by way of the prescription of appeal is to give by that means a remedy for a grievance which is complained of. The Act demands—for otherwise municipal finance would fall into confusion—a statement and handling of the aggrieved person's case, and that within a period of thirty days to the Council, and, if the grievance complained of be still not remedied, within another period of thirty days to the Circuit Court. Here is promptitude, and the saving of the finance of the year, by making secure the basis of it all; viz., the valuation roll. And then the statute by Art. 5724 proceeds to provide that any appellant failing to prosecute effectually his appeal shall be deemed to have abandoned it and forfeited his rights under it. Thus negatively the precise and actual method of remedy given is confirmed.

It is in the view of the Board nothing to the purpose to enter on the question as to how the grievance is caused—whether by a slip of the pen, an arithmetical error or a deflection from correctness in the principle of valuation.

The Board in this case has not to determine whether some further remedy might not be available in a case of fraud, for fraud is not now maintained and has been eliminated as a ground of action. But the Board would be slow to say that even in such a case the prompt and convenient appeal given to persons aggrieved was excluded because their grievance was alleged to be gross and to have arisen through fraud. The present, however, is an admirable instance of how the statute works. Suppose the valuation rolls objected to were as wholly unsound as was argued for. That incorrectness was corrected, and the remedy given, and the grievance removed, simply by statutory appeal to the Circuit Court in the year 1917. In their Lordships' opinion the same course should have been taken at the making up of each of those rolls now objected to. There is a passage in the judgment of Duff, J., as follows:—

> "Even if it were shown that an assessor had over-valued property in consequence of corrupt influence, I cannot doubt that it would still be open to the municipality to correct the valuation by resorting to the statutory appeal."

To which their Lordships would add that the same course would also appear to be open to the Circuit Court should it appear that the valuation had been corruptly arrived at.

Whether in the case of fraud there would be a remedy apart from the procedure under the Towns and Cities Act does not arise for decision. It might conceivably be the case that fraud would only be brought to light in the course of the enquiry before, say, the Circuit Court; and such a case might be covered by the superintending and reforming power, order and control of the Supreme Court under Section 50 of the Code of Civil Procedure.

But in the present case no such question arises. What has happened is that the aggrieved person has simply jumped over the regulative Act to the superintending power, and instead of both Acts being read together, the latter has been appealed to, so as to make it truly a supersession of the former. This has been done under the view presented that the challenge made is more than the presentation of a grievance but a demand for a declaration of nullity. To yield to such a demand might, as already stated, in their Lordships' opinion, lead to serious confusion and possibly irretrievable mischance.

It follows that the appeal made to Section 50 of the Civil Procedure Code Act fails, not because a remedy has been refused but because the remedy expressly given and prohibitively fenced has been ignored.

In what has been said reference has been specially made to the valuation roll sought to be declared void. The plaint, however, makes a similar declaration with regard to the rolls "de perception," that is, the collection rolls. The latter, however, are founded on and derived from the valuation roll and in so far as this is so the latter must also stand.

But there is a special particular of attack of these. It is founded on Art. 5731 of the Act 5 Geo. V., cap. 109, passed to amend the St. Michel Charter, and already quoted. That Article provides that *inter alia* farmed land shall be taxed at one-fourth " of its value as entered on the valuation roll " with a maximum taxation of 150 dollars per acre.

It follows that the valuation roll now declared valid must be the basis for the proportion struck. It is an admitted fact in the case that the appellants' lands were farmed land. If this proportion has not been struck, then the demand for taxes upon any larger scale is in contravention of statute. The Board finds itself in agreement with the judgment of Duff, J., as to this point also. That learned judge says :—

> " There remains the argument based upon the Municipal Charter, s. 28. This section deals with the subject of taxation rather than the subject of valuation. It can afford no basis for impeaching the assessment roll. Nor do I think it is a good ground for impeaching the collector's roll except as an answer to a claim for taxes. The contention now raised will be open to the respondents in answer to such a claim."

This appears to the Board to be correct.

In the appeal of Pesant, as to the imposition of the education rate, no specialty occurs as to the principle.

For those appellants equally with the others neglected the statutory remedy of appeal and they challenge the valuation roll and their appeal must consequently fail.

Their Lordships will humbly advise His Majesty that these appeals be dismissed with costs.

In the Privy Council.

SHANNON REALTIES, LIMITED,

v.

THE TOWN OF ST. MICHEL.

NAPOLEON PESANT AND OTHERS

v.

THE TOWN OF ST. MICHEL AND ANOTHER.

DELIVERED BY LORD SHAW.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1923.