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*March 7.
*June 22.

THE ATTORNEY GENERAL OF CANADA, (INTERVENANT IN THE COURT BELOW)..... APPELLANT;

AND

THE CITY OF MONTREAL (PLAINTIFF IN THE COURT BELOW)..... RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Property occupied under lease by Militia Department—Not liable to municipal taxation—Prerogative of the Crown—10-11 *Vic. ch.* 17—23 *Vic. ch.* 61 *sec.* 58—*C. S. L. ch.* 4 *sec.* 2—37 *Vic. ch.* 51 *sec.* 237 *Q.—Mun. Code L. C. art.* 712—36 *Vic. ch.* 21 *sec.* 18 *Q.—Reasons for judgment.*

The Dominion Government having leased certain property in the city of Montreal for the use of Her Majesty, with the condition that the Government should pay all taxes and assessments which might be levied and become due on the said premises during the term of the lease, the corporation of the city of Montreal brought an action against the owners of the property for the municipal taxes accruing during the period of time the said property was so leased to and occupied by the Government of the Dominion of Canada.

*PRESENT—Sir W. J. Ritchie C. J., and Strong, Fournier, Henry and Taschereau JJ.

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On an intervention fyled by the Attorney General of Canada praying that the action be dismissed:

Held, reversing the judgment of the court below, Strong J. dissenting, that the property in question was exempt from taxation under C. S. L. C. ch. 4 sec. 2. *Corporation of Quebec* v. *Leaycraft* distinguished (1).

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), affirming the judgment of the Superior Court in so far as the intervention of the present appellant had been dismissed, and in so far also as the defendants in the suit had been condemned to pay the taxes claimed. The facts and pleadings are fully set out in the judgment of Strong J. hereinafter given.

Church Q.C. appeared on behalf of the appellant, and *Roy* Q.C. on behalf of the respondents.

The following statutes and authorities were referred to by counsel:—

For appellant: Cons. Stats. L. C. ch. 4 sec. 2; Quebec Interpretation Act, 31 Vic. ch. 7 sec. 5 (P.Q.); 37 Vic. ch. 51 sec. 237 (P.Q.); 36 Geo. III. ch. 9 sec. 62; 10 and 11 Vic ch. 17; B. N. A. Act sec. 125; 23 Vic. ch. 61 sec. 58; Maxwell on Statutes (2).

For respondent: *The Corporation of Quebec* v. *Leaycraft and the Attorney General, Intervenant* (1); Harrison's Municipal Manual (3); Cons. Stats. L. C. ch. 1 secs. 8 and 9.

Sir W. J. RITCHIE C.J.—As to the contention founded on the clause in the lease in relation to the payment of taxes by the Crown, this, in my opinion, has nothing whatever to do with this case; it is merely a matter of contract between the lessor and lessee, with which the corporation of Montreal has nothing whatever to do; that provision merely amounts to this, if the land is not exempt then the crown, as between lessor and lessee, agrees with the lessor to pay

(1) 7 Q. L. R. 56.

(2) Pp. 2, 49, 51.

(3) Pp. 609, 610.

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all and every the taxes, of whatever nature they may be, that may arise or become due and exigible upon the said premises during the period of the lease, but if the land is not legally assessable by reason of an exemption in favour of the crown, then no taxes could arise or become due and exigible, and therefore none are to be paid by either the lessor or lessee, and so the clause, no doubt introduced by the lessor *ex majori cautelâ*, becomes of no effect.

Indeed, the plaintiffs, in their declaration, do not pretend to claim the right to assess on any such ground, "Their claim is that the defendants are indebted to them in the sum of $1,832.12 for assessments or taxes imposed according to law, and the by-laws of the corporation on the immovable property belonging to the defendant's, situate, &c., for the years '74, '75, '76. This is perfectly intelligible, and if these taxes have been imposed on defendants according to law, they are recoverable, and this brings up the simple and only question in issue: Were they imposed according to law? The corporation can get no right to assess property not assessable by reason of any contract entered into between private individuals, be they the proprietor and his lessee or any other parties, in reference to the property. Their only right to assess is by virtue of authority of the legislature, and if the legislature has given no such authority, what right have they to levy any assessment? If, therefore, this property is by law exempt from assessment, that ends the matter, and this, as I have just said, is the only question in the case. It is admitted that Her Majesty, by the Government of the Dominion of Canada, occupied the property for which the taxes are claimed in virtue of the leases produced and these leases show that the property was for the use of the militia department, and that department had the right to erect all rifle ranges necessary for rifle practice and temporary sheds and tents which may be

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required. It cannot, I should think, be disputed that the property of the crown, or property occupied by Her Majesty or Her servants for Her Majesty, is exempt from taxation, and it seems to me equally beyond dispute that this exemption can only be taken away by express legislative enactment. It is not necessary to go back to the old authorities which all establish and recognize this royal prerogative because in the case of the *Mersey Docks* v. *Cameron* (1) Mr. Justice Blackburn read the opinion of the majority of the judges which was adopted and acted on by the House of Lords and in which he thus enunciates the law on this subject:

> The crown not being named in the statute of Elizabeth is not bound by it; and consequently the overseers cannot impose a rate on the Sovereign in respect of lands occupied by Her Majesty, nor on those occupied by Her servants for Her Majesty. The exemption depends entirely on the occupier and not on the title to the property. The tenants of the crown property, paying rent for it, are ratable like other occupiers.
>
> On the other hand, where a lease of private property is taken in the name of a subject, but the occupation is by the Sovereign or Her servants on Her behalf, the occupation being that of Her Majesty, no rate can be imposed; *Lord Amherst* v. *Lord Sommers* (2). So far the ground of exemption is perfectly intelligible but it has been carried a good deal farther, and applied to many cases in which it can scarcely be said that the Sovereign or the servants of the Sovereign are in occupation.

In this case is there any statute depriving the crown of this exemption? None whatever. On the contrary there are statutes of Quebec distinctly, in my opinion, recognizing this exemption and relieving the property of the crown and property occupied by officers of the Crown for the public service from taxation, even if such statutes were, in view of the royal prerogative, requisite or necessary. They are as follows: 10 & 11 Vic. Ch. 17; Cons. S. L. C. ch. 4 sec. 2; 23 Vic. ch. 61 sec. 58 and ch. 56 secs. 8 and 9.

It is therefore for the city of Montreal to show a

(1) 11 H. L. Cas. 443. (2) 2. T. R. 372.

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special right given in express terms to tax property held for Her Majesty. It has not this right under its charter in force during the years in question, viz: 37 Vic. ch. 51. On the contrary, that act expressly declares by section 237:—"This act shall not affect in "any manner the rights of Her Majesty, her heirs and "successors."

'The only right to tax the crown which the city of Montreal ever had was that expressly conveyed by 36 Geo. III. ch. 9 sec. 62, which conferred that power, not upon the corporation of Montreal (for none existed), but upon justices of the peace therein named. Section 57 of this act provides that assessments may be levied upon the "occupier or occupiers (not the proprietors) of "lands, lots, houses, etc.;" and section 62 declares that it is expedient that "public buildings, dead walls and "void spaces of ground belonging to government or "societies," etc., etc., should be assessable; and, as amplification and explanation of the term "belonging "to," we find in the same section a provision that a particular fund shall be drawn upon for these assessments upon property which may "belong to His "Majesty or be occupied for his use."

These sections show that a right then existed to tax the property held or occupied by the Government; but it is not now maintainable—

"First. Because all former acts affecting the respondents have been repealed by their present charter (1).

"Second. But chiefly because this right to tax was expressly taken away by 10-11 Vic. ch. 17, which reads as follows:—

"An Act to exempt the property of the Crown from local rates and taxes in Lower Canada.—Whereas, by the laws of that portion of the province formerly the Province of Upper Canada, all property held by or in trust for the Crown is exempt from local taxes and assessments, and it is expedient that such property should be so exempt in that portion of the Province formerly Lower Canada: Be it therefore enacted by the Queen's Most Excellent Majesty, by and

(1) See sec. 241 of 37 Vic. ch. 51. Q.

with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by the virtue of and under the authority of an act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, 'An Act to reunite the Provinces of Upper and 'Lower Canada, and for the government of Canada;' and it is hereby enacted by the authority of the same, that, from and after the passing of this act, so much of the sixty-second section, or of any other part of the act of the Legislature of Lower Canada passed in the thirty-sixth year of the reign of King George the Third, and intituled, 'An Act for making, repairing and altering the highways 'and bridges within this Province, and for other purposes,' or of any other act or law in force in that portion of this province for merly the Province of Lower Canada, as authorizes the imposing of any local rate or tax on any property belonging to Her Majesty, or held in trust by any officer or party for the use of Her Majesty, or the demand of any sum of money as commutation for any statute or other labour on any highway in respect of such property, or the performance of such statute labour, or the payment of any such rate or tax imposed on any such property out of the public moneys of this province, shall be and is hereby repealed; and hereafter all such property as aforesaid, in whatever part of this Province the same shall be situate, shall be exempt from all local rates and taxes, statute or other labour on any highway, or commutation for the same, any act or law to the contrary notwithstanding; provided always, that any arrears of such rates or taxes accrued and payable in Lower Canada before the passing of this act, may be paid as if this act had not been passed.

The Confederation Act, Article 125, lays down the general rule, that no property belonging to Canada or any one of the Provinces shall be liable to taxation.

"The article was, moreover, only another way of declaring the principle which the C. S. L. C., cap. 4, sec. 2, had already enunciated; *i.e.*, the exemption of any property belonging to or held in trust by any officer "or party." The section is as follows:—

"2. All property belonging to Her Majesty, or held in trust by any officer or party for the use of Her Majesty in whatever part of this Province the same is situate, shall be exempt from all local rates or taxes, statute or other labor on any highway, or commutation for the same; but any arrears of such rates or taxes accrued and payable in Lower Canada before the twenty-eighth day of July, one thousand eight hnndred and forty-seven, may be paid as if this Act had not been passed.—10-11 Vic. cap. 17. See also 23 Vic. cap. 61 sec. 58.

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"The section of the Consolidated Statutes already quoted refers to 23 Vic. cap. 61 sec. 58, which reads as follows:—

"58. All public buildings intended for the use of the Civil Government, for military purposes, for the purposes of education or religious worship, all property belonging to Her Majesty, or held in trust by any officer or person for the use of Her Majesty, all parsonage houses, burying grounds, charitable institutions and hospitals duly incorporated, and the lands upon which such buildings are erected, shall be exempt from all assessments or rates imposable under this act.

Ch. 1 sec. 8 of the C. S. L. C. declares that

The said Consolidated Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said acts and parts of acts so repealed, and for which the said Consolidated Statutes are substituted. 23 V. c. 56 s. 8.

9. But if upon any point the provisions of the said Consolidated Statutes are not in effect the same as those of the repealed acts and parts of acts for which they are substituted, then as respects all transactions, matters and things subsequent to the time when the said Consolidated Statutes take effect, the provisions contained in them shall prevail, but as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed acts and parts of acts shall prevail. 23 V. c. 56 s. 9.

These statutes seem to me distinctly to indicate that so far from depriving property occupied by the Crown of exemption from taxation, the intention of the legislature was to grant exemption, certainly not to take from the Crown that which belonged to it by royal prerogative.

I do not think the case relied on by the plaintiffs of *Corporation of Quebec* v. *Leaycraft and the Attorney General* (1) is in the least degree in point; that was the case of a warehouse owned and occupied by a private individual for warehousing goods of parties who did not wish to pay the duties immediately, and of which warehouse the crown was neither the owner nor occupier. The only connection the crown had with the warehouse being the right to put a lock on it,

(1) 7 Q. L. R. 56.

the key of which was kept by a customs officer to prevent the goods being removed till the customs duties were paid or satisfied. The actual beneficial occupation being in the proprietor who received the consideration for its use as a warehouse, and in the owners of the goods placed there for safe custody, and for which they paid the proprietor the warehouse dues, the crown having therefore no title to or occupation of the premises, beneficial or otherwise, but the same belonging to and being in the occupation of private individuals, there was, in my opinion, no pretense for saying that the property was exempt from taxation. But in this case the property in question being under lease to the crown, and occupied by officers and servants of the crown, it is, in my opinion, clearly exempt from municipal taxation by the corporation of Montreal.

I regret very much that we have not had the advantage to be derived from a perusal and consideration of the reasons which led the judges of the Court of Appeal to the conclusion at which they arrived. I have so repeatedly pointed out the grave inconvenience, and it may be possible injury, resulting to litigants from a non-compliance in so many cases, particularly from the Province of Quebec, with the rule of this court, made under and by virtue of the Supreme Court Act, which gives to the rules of the Supreme Court force of law, requiring such reasons to form part of the case, that I suppose it is useless to repeat them now. I would add, however, that in justice to the court appealed from and to ourselves, I think we should, as a court of appeal, know the reasons on which the court below acted. If it has been thought necessary by statute to provide that the reasons of the judges on appeals before the Privy Council should be transmitted, it seems to be quite as important that we should have them in appeals before this court.

STRONG J.—In this case the principal action was in-

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stituted by the city of Montreal against Les Dames de la charité de l'Hôpital Général de la cité de Montreal (commonly called the Grey Nuns) to recover the municipal taxes assessed upon certain immovable property belonging to the defendants and situated in the city of Montreal for the years 1874, 1875 and 1876, amounting in the aggregate to the sum of $1,984.46. The defendants pleaded a peremptory exception to the effect that they were not liable to pay the taxes claimed by the plaintiffs inasmuch as during the years in respect of which those taxes were assessed they were not in possession of the land, which was leased to the Minister of Militia for the use of the Crown during all the time mentioned in the action, and that Her Majesty's Government for the Dominion of Canada which had so leased the land had charged itself with the payment of the taxes and assessments, and that the city of Montreal cannot by law recover any tax or assessment in respect of lands occupied by Her Majesty for the Government of the Dominion, and the exception sets forth three leases each for the term of one year covering the period from 1st of April, 1874, to 5th of March, 1877, and alleges that since the last mentioned date the lease has been continued by "*tacite reconduction.*"

To this plea the plaintiffs filed an answer alleging that during the time for which the taxes were assessed the defendants were proprietors of the lands and in receipt of the revenues and profits thereof.

On the 26th September, 1878, the then Attorney General of the Dominion, acting for and in the name of Her Majesty, intervened in the action and subsequently filed a plea to the same effect as that of the defendants to the principal demand, producing as exhibits the three leases mentioned in the defendants plea, which each contained a clause by which the Minister of Militia for the Crown undertook to pay taxes and indemnify the lessors against the same. And to this plea by

the Attorney General the plaintiffs filed an answer in all respects similar to that filed in response to the exception of the principal defendants. No facts being in dispute the cause was heard in the Superior Court upon an admission that the taxes claimed were in accordance with the assessment roll and that the Crown had had possession during the time alleged under the leases mentioned. The Superior Court on the 8th November, 1880, rendered a judgment dismissing the defence of the Grey Nuns, the principal defendants, and condemning them to pay the amount claimed in the action and also dismissing the contestation of the action by the Attorney General and adjudging that the "intervenant" was bound to indemnify the principal defendants from all the consequences of the judgment against them.

Against this judgment the Attorney General appealed to the Court of Queen's Bench, which rendered a judgment dismissing the appeal so far as the judgment upon the principal demand is concerned, and reforming the judgment upon the intervention by substituting an order of dismissal of the intervention for the adjudication of the Superior Court that the Crown should indemnify the defendants.

From this latter judgment the Attorney General now appeals to this court.

I am unable to concur in the view taken by the majority of this court, that the judgment of the Court of Queen's Bench was erroneous. By the leases which form part of the record (having been produced as exhibits,) it appears that the lands in question were leased by the Grey Nuns to the Minister of Militia in his official capacity for the purposes of a rifle range. The lands were therefore, I fully concede, to all intents and purposes leased for the use of the Crown, and the possession and enjoyment had under the leases was the possession and enjoyment of the Crown, and the Crown

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and the defendants are therefore in the same position exactly as if the lease had been directly to Her Majesty. But I am unable to see any ground in this for exempting the proprietors from taxation. The taxes are not claimed from the Crown by the city. The only statutory enactment which is pointed to as authorising such an exemption is that contained in the Consolidated Statutes of Lower Canada, ch. 4 sec. 2, by which it is enacted that:

> All property belonging to Her Majesty, or held in trust by any officer or party for the use of Her Majesty, in whatever part of this Province the same is situate, shall be exempt from all local rates or taxes, statute or other labor in any highway, or commutation of the same; that any arrears for such rates or taxes accrued and payable in Lower Canada before the 28th July, 1847, may be paid as if this act had not been passed.

There is manifestly nothing in this section exonerating proprietors who may happen to have the good fortune to have the Crown as tenants of their immovable property from such rates, taxes and assessments as may be imposed by the city authorities pursuant to the terms of the act of incorporation of the city of Montreal. These taxes are not imposed in respect of the leasehold interest, but in respect of the proprietorship of the land which is of course absolutely in the defendants, the Crown having a right to enjoy it only, under a mere personal contract, in no way operating as a dismemberment of the property or conferring any real right whatever. It cannot therefore be said that these taxes are imposed upon property "belonging to or held in trust" for the Crown so as to bring it within the terms of the enactment quoted. There is no use in referring to anterior enactments, if any could be referred to, authorizing such an exemption as is claimed, for by the 8th and 9th sections of the Interpretation Act (Cons. Stats. of Lower Canada, cap. 1) the provision contained in chap. 4, section 2, already extracted, is to be deemed declaratory of such former laws, and if in anything it differs from them it is to be taken, as regards the future,

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as substituted for such anterior legislation.

It being impossible, therefore, to rest the defence upon any positive legislation, resort is had to an argument derived rather from the doctrines of political economists than from any juidical principles. It is said, as I understand this argument, that the pretensions of the defendants and of the Attorney General must, irrespective of any statutory exemption, be taken to be well founded, because there being no direct authority to tax the crown (which I entirely admit) this assessment is indirectly a proceeding levying taxes on the crown, inasmuch as the crown, being bound to indemnify its lessors against the payment, will ultimately have to bear the burden. If I was not a single dissentient judge in this court I should have thought that this argument is so obviously fallacious as scarcely to call for observation, but as I differ from the other members of the court I am bound to assume that it is not so untenable as it appears to me and is entitled to respectful consideration.

There is no doubt that the city of Montreal cannot tax the property of the crown. This I freely admit. The crown cannot be affected by a statute giving powers of local taxation to a municipal body unless it is expressly named and express powers to tax its property are conferred, which is not the case in the Montreal Act of Incorporation. But as I have already said there has been no attempt to impose a tax upon the crown. This argument, therefore, must mean that the incidence of the tax is such that the burden of it will fall ultimately upon the crown. No legal authority can be cited in support of such a position. The theories of authors who treat of a speculative science like political economy are not, in my opinion, proper elements of judicial decisions, except only in those cases where the draftsmen of Acts of Parliament having unfortunately borrowed terms from the nomenclature of that science, the courts

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are forced to place an interpretation upon them in order to construe the act.

I know nothing about the incidence of this tax—all I say is that the Montreal Incorporation Act authorizes the city to tax proprietors in respect of their immovable property, and the powers conferred by it have been followed by the city, for the Grey Nuns, the principal defendants in this action, and no one else are the owners of the full property in the lands upon which these taxes have been imposed, and upon this short ground alone it seems to me very clear that the judgment of the Court of Queen's Bench is free from error and ought to be affirmed, and this opinion, it appears to me is fully sustained by the case of *Leaycraft* v. *The Queen* (1).

I may add, however, that the argument which is professed to be derived from the economists seems to me particularly unfortunate, for, without professing to decide this case on other than the purely legal grounds already stated, it is not out of place to say that the authorities which the defendants are driven to invoke do not support their pretensions, for, viewed in the light of the doctrines taught by political economy, this tax is to all intents and purposes a tax upon rent, and according to a consensus of the best authorities in that science, a tax upon rent (using the word in its popular sense) being a tax upon the profits of the land is a burden falling upon and ultimately to be borne by the proprietor, and not by the tenant or occupier, even in a case which does not occur here, where such tenant or occupier may be bound to pay the tax in the first instance, the theory of course being that the tenant who has to pay taxes pays so much less rent for the land. Consequently there is no pretence for saying that owing to the incidence of the tax this is in effect a burden imposed upon the crown. Something was said in argument to the effect that if the taxes are held

(1) 7 Q. L. R. 56.

to be legally imposed, that this is tantamount to holding that the moveable property of the crown on the lands in question is liable to seizure. The plain answer to this, however, is that no such result necessarily follows.

I am of opinion that the appeal should be dismissed.

FOURNIER J.—concurred with Sir W. J. Ritchie C.J.

HENRY J.—I think that the corporation have no right to impose a tax on this property. It was leased to the government for a military purpose, and it was one of the terms and conditions of the lease that the government should pay the taxes. If that had not been inserted in the agreement the government would have had to pay the rent representing such taxes; but having taken upon itself to clear the other parties of the taxes, it clearly shows that the taxes will have to be paid by the government, if the attempt of the corporation is successful.

I agree with the majority of this court that the corporation has no power to levy the taxes on these premises for the period of time they were occupied by the Dominion Government.

TASCHEREAU J.—I am also of opinion that this appeal should be allowed. This property is held in trust by the Minister of Militia for the use of Her Majesty, and, under the very terms of ch. 4 sec. 2. C. S. L. C. is exempt from taxation. Moreover, it is for the respondent to show a right to tax this property, not for the crown to show an exemption. A tax upon a property held and occupied, as this one, by the crown for public purposes must necessarily fall upon the Crown; that is to say, be paid out of the revenues of the Dominion. In the very terms of the B. N. A. Act, the city of Montreal is not authorized and cannot be authorized to levy the funds necessary for the

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administration of its municipal government upon the inhabitants of the rest of the Dominion, and I am sure that the legislature did not intend to authorize them to do so. It would have been granting them powers withheld from and refused to the other municipalities of the province. For under art. 712 of the Municipal Code, as amended by 36 Vic. ch. 21 sec. 18, properties occupied, as this one is, by the Government, are specially exempted from taxation.

Appeal allowed with costs.

Solicitors for appellant: *Chapleau, Church, Hall & Nicholls.*

Solicitor for respondents: *Roüer Roy.*