LES ECCLÉSIASTIQUES DE ST. SULPICE DE MONTREAL (DEFENDANTS)..... APPELLANTS;

1889
*Jan. 18.
*Mar. 19.

AND

THE CITY OF MONTREAL (PLAINTIFF) RESPONDENT.

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

Jurisdiction—Future rights—Supreme and Exchequer Courts Act—Sec. 29—Municipal taxes—Special assessments—Exemption—41 Vic. (Q.) ch. 6, sec. 26—Educational institution—Tax.

On an appeal from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) in an action brought to recover $361.90, the amount of a special assessment for a drain along the property of the defendants the respondent moved to quash for want of jurisdiction on the ground that the matter in controversy was under $2,000, and did not come within any of the exceptions in section 29 of the Supreme and Exchequer Courts Act;

Held, that the case came within the words "such like matters or things where the rights in future might be bound," in paragraph 6 of section 29, and was therefore appealable.

By 41 Vic. ch. 6 sec. 26 all educational houses or establishments, which do not receive any subvention from the corporation or municipality in which they are situated, are exempt from municipal and school assessments "whatever may be the Act in virtue of which such assessments are imposed, and notwithstanding all dispositions to the contrary."

Held, reversing the judgment of the court below, that the exemption from municipal taxes enjoyed by educational establishments under said 41 Vic. ch. 6 sec. 26, extends to taxes imposed for special purposes, *e.g.* the construction of a drain in front of their property. (Sir W. J. Ritchie C.J. dissenting.)

Per Strong J.—Every contribution to a public purpose imposed by superior authority is a "tax."

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

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

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APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (Appeal Side) reversing the judgment of the Superior Court (1). This was an action brought to recover $361.90, the amount of a special assessment for a drain along the property of the defendants.

The amount of the taxes was not contested, but by a special plea the defendants contended that their property was exempt from taxation, because the said property was, at the time of the construction of the drain, as it has since continued to be, an educational institution receiving no grant from the Corporation or Municipality of Montreal, in which it is situated.

The answer to the plea was that the exemption claimed by the defendants did not apply to the taxes and assessments claimed by the action.

The facts of the case were admitted by the parties, and it was agreed that the city's claim was for a special assessment for a local improvement, and that the property was destined to the purposes of education, and received no subsidy from the municipality.

On the 11th October, 1888, *Ethier*, counsel for the respondent moved to quash the appeal, on the ground that the matter in controversy was under $2,000, and did not come within any of the exceptions in sec. 29 of the Supreme and Exchequer Courts Act. *Geoffrion* Q.C. *contra.*

Per Curiam. The case is appealable as coming within the words "such like matters or things where the rights in future might be bound" in par. 6 of sec. 29 of the Supreme and Exchequer Courts Act—If the rate struck was found to be insufficient and another rate imposed, the parties would be bound by the judgment in this case.

(1) M. L. R. 2 S. C. 265.

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On the merits—*Geoffrion* Q.C., for the appellants (defendants) contended that under 41 Vic. ch 6, sec. 26 (P.Q.), every educational institution receiving no grant from the Corporation of the City of Montreal is exempt from all municipal and school taxes, and that the words used in the Act include all taxes, rates or assessments. See Arts. 19, sec. 22, 712 and 713, Mun. C., *Wylie* v. *City of Montreal* (1); *City of Montreal* v. *Christ Church Cathedral* (2).

Ethier for respondent (plaintiff) contended that the exemption did not extend to special assessments for improvements, and that a special assessment levied on an immovable property in proportion to the benefit it derives from a local improvement, is not a tax, in the true sense of the word: it is now acknowledged by the best authorities on municipal taxation that a tax is an impost which is to be borne by all the members of a corporation for the general advantage and in the interest of the public; on the contrary a special assessment is a certain share the proprietors of a limited locality are called upon to contribute according to the increase in value given their properties by a local improvement; numerous decisions based on this distinction have been pronounced by the courts of the neighboring Republic, where, it may be readily conceded, the theory of municipal government is thoroughly understood.

See Maxwell on Statutes (3); Cooley on Taxation (4); Angell on Highways (5); Hilliard on Taxation (6); Burroughs on Taxation (7); Abbott on Law of Corporations (8); Potter on Corporations (9); *Kirby* v. *Shaw* (10); *Wright* v. *Boston* (11); *Hayden* v. *Atlanta* (12);

(1) 12 Can. S.C.R 384.
(2) M. L. R. 4 S. C. 13.
(3) P. 66.
(4) P. 606.
(5) P. 196 nos. 172-173.
(6) P. 72 sec. 5 pp. 74-85.
(7) P. 113 sec. 67.
(8) 2 vol. P. 683 nos. 98-100.
(9) 1 vol. P. 280 sec. 213.
(10) 19 Pa. St. 258.
(11) 9 Cush. 233-241.
(12) 70 Ga. 817.

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Municipal Code L. C. O. (1); Municipal Laws of Montreal, 1865, Glackmeyer (2); Municipal Laws of Montreal, 1870, Glackmeyer (3); *Haynes* v. *Copeland* (4); Dillon on Municipal Corporations (5); Proudhon, Domaine de la Propriété (6); Dalloz, Dict., Vo. "Contributions Directes" (7); *Shaw* v. *Laframboise* (8); C. C. for L. C., arts. 2009 & 2011; See also 46 Vic. ch. 78 sec. 21, (Quebec).

Sir W. J. RITCHIE C.J.—I am of opinion the appeal should be dismissed with costs.

STRONG J.—The enactment upon which the decision of this appeal turns is that contained in Statute 41 Vic. cap. 6, sec. 26, being an amendment or addition to the Common School Act cap. 15 of Con. Stats. of Lower Canada.

It exempts all educational houses or establishments, which do not receive any subvention from the corporation or municipality in which they are situated, from municipal and school assessments (des cotisations) "whatever may be the act in virtue of which such "assessments are imposed, and notwithstanding all "dispositions to the contrary."

What is sought to be recovered from the appellants is a contribution or sum assessed in respect of a drain constructed by the corporation in front of the appellants' property situated in the city of Montreal.

Under the Act of incorporation of the city of Montreal the appellants, like other property owners, would be liable to pay this contribution, unless they can bring themselves within this exemption in 41 Vic.

The appellants receive no subvention or pecuniary aid

(1) Arts. 1-475.
(2) P. 46.
(3) By-law No. 45, sec. 3 p. 179.
(4) 18 U. C. C. P. 150.
(5) 2 Vol. ed. 3 p. 727, 776-77-78.
(6) 3 Vol. p. 101 No. 849.
(7) No. 114 et passim.
(8) 3 Rev. Leg. 451.

of any kind from the city. Their exemption, therefore, must depend on the single point whether this assessment or charge in respect of a contribution to the drain is or is not a municipal assessment.

With great respect for the Court of Appeal, I think there can be little doubt on this point. The appellants are undoubtedly "assessed" by the city in respect of the contribution which it is sought to compel them to pay, for I understand the word assessment to imply "the assessment of a tax." Then the appellants are taxed for this drain, for every contribution to a public purpose imposed by superior authority is a "tax" and nothing less. The city is therefore seeking to compel the payment of this contribution in direct contravention of the terms of the enactment referred to which clearly exempts the appellants.

For these reasons, which are fully and ably set forth in the dissenting opinion of Mr. Justice Church in the Court of Appeal, and in that of Mr. Justice Loranger in the Superior Court, I am of opinion that we must allow this appeal with costs to the appellants here, as well as in all the courts below.

FOURNIER J.—Par son action en cette cause, l'intimée réclame des appelants la somme de $361 90, pour taxes et cotisations imposées suivant la loi et les règlements de la corporation de la cité de Montréal, pour la contribution des appelants à un égout ou canal, construit en 1878, en face de leur propriété portant le n°1717, dans le quartier Saint-Antoine de la dite cité.

En réponse à cette demande les appelants ont plaidé qu'ils possédaient et occupaient cette propriété aux dates mentionnées en la déclaration, et encore actuellement, comme maison d'éducation et les dépendances d'icelle, —ne recevant aucune subvention de la corporation ou

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municipalité de la dite cité de Montréal où cette propriété est située.

Par sa réponse à ce plaidoyer, l'intimée allègue que la propriété en question n'est pas exemptée des cotisations municipales et scolaires et notamment de celles réclamées en cette cause.

La preuve a été faite au moyen d'une admission couvrant tous les faits qu'il était nécessaire d'établir pour la décision du litige.

Au mérite, l'honorable juge Loranger a rendu jugement, maintenant l'exemption de taxes invoquée par les appelants, mais son jugement a été infirmé par la cour du Banc de la Reine pour la raison que l'intimée avait le droit de faire cet ouvrage et d'en répartir le coût parmi les personnes dont les propriétés devaient en profiter; et aussi parce que l'ouvrage en question étant d'un caractère local, pour des fins tout à fait locales et à l'avantage spécial de la propriété des appelants, la cotisation prélevée pour en défrayer les dépenses n'était pas de la nature d'une taxe municipale conformément à l'acte 41 Vict., ch. 6, sec. 26,—mais qu'elle était au contraire d'une nature purement locale.

La question soulevée par cette contestation est de savoir si l'exemption de taxes municipales et scolaires accordée par le 41ème Vict., ch. 6, sec. 26, comprend aussi l'exemption de cotisations spéciales imposées sur la propriété immobilière pour améliorations dans une localité particulière de la municipalité.

L'exemption dont il s'agit est énoncée dans les termes suivants :

3. Toutes maisons d'éducation qui ne reçoivent aucune subvention de la corporation ou municipalité où elles sont situées, ainsi que les terrains sur lesquels elles sont érigées et leurs dépendances, seront exemptes des cotisations municipales et scolaires, quelque soit l'acte ou charte en vertu duquel les cotisations sont imposées, et ce nonobstant toutes dispositions à ce contraires.

L'effet de cette clause a déjà été considéré par cette

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cour dans la cause de Wylie contre la présente intimée (1). La différence entre les deux causes est que dans la première les taxes réclamées, ne comprenaient pas comme celles-ci une cotisation spéciale pour amélioration locale à la propriété immobilière. La question à résoudre se réduit donc à savoir si les expressions de la sec. 26, "cotisations municipales," comprennent aussi les cotisations spéciales d'une nature locale.

Avant l'adoption de la sec. 26, le principe de l'exemption de taxes scolaires en faveur des institutions d'éducation était déjà introduit dans les lois de la province de Québec, et notamment dans le ch. 15 de l'acte des écoles communes, sec. 77, parag. 2. Il est aussi énoncé dans plusieurs autres statuts, entres autres, le ch. 24, statuts revisés, B. C., l'acte municipal et des chemins, dont la sec. 58 met les maisons d'éducation dans la catégorie des propriétés exemptes de toutes taxes ou cotisations imposées en vertu de cet acte. Le code municipal, 34 Vict., ch. 68, art. 712, parag. 3, dans sa longue énumération de propriétés exemptes de taxes, comprend aussi les institutions d'éducation.

Cette exemption de taxes se retrouve encore dans la 40 Vict., ch. 29, concernant les clauses générales d'incorporation des cités et villes, à la sec. 325, parag. 3. Ce principe d'exemption que l'on retrouve dans tant de statuts paraît avoir été adopté systématiquement par la législature comme un moyen d'encouragement pour la cause de l'éducation. Le code municipal ne s'appliquant qu'aux municipalités rurales, n'affecte pas la cité de Montréal dont la charte avant d'avoir été amendée par la 38ème Vict., ch. 73, ne lui imposait aucune exemption ; mais la section 3 de cet amendement a décrété l'exemption des églises, presbytères, palais épiscopaux, de toutes taxes, et exempté de taxes

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municipales ordinaires et annuelles les établissements occupés pour des fins de charité. Dans cette disposition, les institutions d'éducation n'ont pas été comprises —et elles seraient sans doute soumises aux taxes sans la clause 26 de la 41ème Vict., ch. 6, qui les en a exemptées. L'intention du législateur a été évidemment de faire prévaloir le même système par toute la province. C'est pour cela qu'il s'est prononcé d'une manière si générale qu'il n'est pas possible d'en limiter l'effet. En déclarant que les maisons d'éducation seraient exemptes des cotisations municipales et scolaires, quelque soit l'acte ou charte en vertu duquel les cotisations sont imposées et ce nonobstant toutes dispositions à ce contraire, le but était évidemment d'atteindre la cité de Montréal, qui se trouvait la seule localité de la province qui n'était pas soumise à une semblable disposition. La cité ayant une charte spéciale, on aurait pu peut-être prétendre que la loi qui la régit ne pouvait être amendée par des expressions générales dans une loi étrangère, aux matières municipales. Mais le doute est impossible en présence des expressions employées pour généraliser et spécialiser l'exemption: "quelque soit l'acte ou charte en vertu duquel les cotitions sont imposées, et ce nonobstant toutes dispositions à ce contraires." Il faut nécessairement en conclure que la cité de Montréal est soumise à l'exemption décrétée par la sec. 26 ci-dessus citée et qui est postérieure à sa charte.

La distinction que fait l'intimée entre les taxes ordinaires et annuelles aurait pu être soutenable en vertu de la sec. 3, de l'acte 38 Vic.,—où ces expressions paraissent avoir été ajoutées dans le but de limiter les effets d'exemptions. Les cotisations spéciales pour fins purement locales pourraient être distinguées des taxes ordinaires et annuelles, si la question était soulevée ici à propos d'institutions de charité mentionnées dans

la sec. 3, et si elle devait être décidée d'après cette loi. La section 26 qui doit servir de règle pour la décision de cette question ne fait aucune distinction quelconque entre les taxes ou spéciales ou générales, elle se sert dans son sens le plus large des mots cotisations municipales, en ajoutant quelque soit l'acte ou charte en vertu duquel elles soient imposées. Il me semble qu'il est tout à fait impossible de trouver dans ces expressions la possibilité de faire la distinction que l'intimée essaie de faire prévaloir. Les termes employés sont d'une généralité si complète et si absolue qu'il n'y a pas à se méprendre sur leur signification—"toutes cotisations municipales" comprend toutes cotisations municipales quelqu'en soient la nature.

TASCHEREAU J.—I am of opinion that appellant's property is free from this tax for the reasons given by Mr. Justice Loranger in the Superior Court (1).

PATTERSON J. concurred with STRONG J.

*Appeal allowed with costs.**

Solicitors for appellants: *Geoffrion, Dorion, Lafleur & Rinfret.*

Solicitors for respondent: *Roy & Ethier.*

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(1) M. L. R. 2. S. C. 265.

* On a motion for leave to appeal made to the Judicial Committee of the Privy Council, the following judgment was delivered on the 27th July, 1889:—

BY LORD WATSON.

This is a petition at the instance of the municipal corporation of the city of Montreal, for leave to appeal from a judgment of the Supreme Court of Canada, by which the Seminary of St. Sulpice, which is within the boundaries of the city, has been exempted from payment of a sum of $361.90, about £70 sterling, being the proportion charged upon it, by the petitioners, of a special assessment made by them for the cost of constructing a main drain which runs in front of its premises. The Supreme Court, by a majority of four to one (Ritchie, C.J., being the dissentient judge), reversed the decision of the Queen's Bench for Lower Canada, which was also pronounced by a majority

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of four to one, and restored the judgment of Loranger, J., the judge of first instance.

In considering applications of this kind, it is necessary to keep in view that the Statute of Canada, 38 Vic., ch. 11, which established the Supreme Court of the Dominion, does not give to unsuccessful litigants a direct right, either absolute or conditional, to appeal from the decisions of that tribunal. Section 47 expressly declares that no appeal shall be brought from any judgment or order of the Supreme Court to any court established by the Parliament of Great Britain and Ireland by which appeals or petitions to Her Majesty in Council may be ordered to be heard; but saves any right which Her Majesty may be graciously pleased to exercise by virtue of her Royal prerogative.

It is the duty of their Lordships to advise Her Majesty in the exercise of her prerogative, and in the discharge of that duty they are bound to apply their judicial discretion to the particular facts and circumstances of each case as presented to them. In forming an opinion as to the propriety of allowing an appeal, they must necessarily rely to a very great extent upon the statements contained in the petition with regard to the import and effect of the judgment complained of, and the reasons therein alleged for treating it as an exceptional one, and permitting it to be brought under review. Experience has shown that great caution is required in accepting these reasons when they are not fully substantiated, or do not appear to be *primâ facie* established by reference to the petitioner's statement of the main facts of the case, and the questions of law to which these give rise. Cases vary so widely in their circumstances that the principles upon which an appeal ought to be allowed do not admit of anything approaching to exhaustive definition. No rule can be laid down which would not necessarily be subject to future qualification, and an attempt to formulate any such rule might therefore prove misleading. In some cases, as in *Prince* v. *Gagnon*, (8 App. Cas. 103), their Lordship have had occasion to indicate certain particulars, the absence of which will have a strong influence in inducing them to advise that leave should not be given, but it by no means follows that leave will be recommended in all cases in which these features occur. A case may be of a substantial character, may involve matter of great public interest, may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal.

The exemption which the Supreme Court has sustained in the present instance is a statutory one. The petitioners narrate the 77th section of the Consolidated Statutes of Lower Canada, cap. 15, and then proceed to allege that the effect of the judgment will be "to determine the future liability "(meaning apparently non-liabi-"lity) of buildings set apart for "purposes of education, or of "religious worship, parsonage "houses, and charitable and educa-"tional institutions and hospitals, "to contribute to local improve-"ments carried out in their inter-"ests and for the benefit of their

"properties." Had that statement been well founded, it might have been an important element in considering whether leave ought to be given. But it is plainly erroneous. The statute in question, which relates to "public education," exempts the properties above enumerated from educational rates levied for the purposes of the act, and from no other rates.

The clause upon which the judgment of the Supreme Court proceeded is section 26 of the statutes of the Province of Quebec, 41 Vic., ch. 6, which is an act to amend the laws respecting public instruction. "It enacts that: "Every education-"al institution receiving no grant "from the corporation or muni-"cipality in which they are situ-"ated, and the land on which they "are erected, and its dependencies, "shall be exempt from municipal "and school taxes, whatever may "be the act or charter under "which such taxes are imposed, "notwithstanding all provisions to "the contrary."

The Seminary of St. Sulpice admittedly does not receive any grant from the Corporation of the City of Montreal, and is therefore within the benefit of the exemption created by section 6, and the only issue raised between the parties is, whether a district rate for drainage improvements, levied from that portion of the municipal area which directly benefits by its expenditure, is or is not a municipal tax within the meaning of the clause.

The petition does not set forth the sources from which the petitioners derive their authority to execute such improvements as drainage, and to assess for their cost. Powers of that description are entrusted to municipal bodies, presumably in the interest of the public, and not for the interest of private owners, although the latter may be benefited by their exercise. *Primâ facie*, their Lordships see no reason to suppose that rates levied for improvements of that kind are not municipal taxes, and at the hearing of the petition their impression was confirmed by a reference to the General Municipal Acts for Lower Canada. The counsel who appeared for the petitioners stated, however, that their powers are derived, not from the General Acts, but from a charter, the terms of which were neither referred to nor explained. If the terms of the charter materially differ from those of the General Acts, that deprives the case of any general importance. But it is quite possible that the concluding words of section 6 may have been purposely introduced by the Legislature in order to secure uniformity of exemption, whatever might be the terms in which the power to assess was conferred; and that, consequently, in construing the clause, the expression "municipal taxes" ought to be interpreted according to its general acceptation, and not according to the meaning which it might be held to bear in some charter or statutes applicable to particular municipalities.

In these circumstances their Lordships are not prepared to advise Her Majesty that the petitioners ought to have leave to appeal. If such questions are, as they say, of frequent occurrence in the city of Montreal, they may have the opportunity of obtaining the decision of this Board in another case, upon appeal from the Court of Queen's Bench for the Province. The petition must therefore be dismissed.