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 *Jan. 15.

WILLIAM R. WEBSTER *et al.* (PETI- } APPELLANTS ;
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AND

THE CORPORATION OF THE CITY } RESPONDENTS.
 OF SHERBROOKE (RESPONDENTS) }

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

Quebec License Laws—55 & 56 Vic. ch. 11, sec. 26—City of Sherbrooke—Charter—55 & 56 Vic. ch. 51, sec. 55—Powers of taxation.

By virtue of the first clause of a by-law passed under 55 & 56 Vic. ch. 51, an Act consolidating the charter of the city of Sherbrooke, the appellant was taxed five cents on the dollar on the annual value of the premises in which he carried on his occupation as a dealer in spirituous liquors, and in addition thereto, under clause three of the same by-law, was taxed a special tax of two hundred dollars also for the same occupation. Sec. 55 of the Act 55 & 56 Vic. ch. 51, enumerates in subsections from *a* to *j* the kinds of taxes authorized to be imposed, subsec (*b*) authorizing the imposition of a business tax on all trades, occupations, &c., based on the annual value of the premises and subsec. (*g*) providing for a tax on persons, among others, of the occupation of the petitioner. At the end of subsec. (*g*) is the following : " the whole, however, subject to the provisions of the Quebec License Act." The Quebec License Act (art. 927 R.S.P.Q.) limits the powers of taxation for any municipal council of a city to \$200 upon holders of licenses.

Held, affirming the judgment of the court below, that the power granted by 55 & 56 Vic. ch. 51, to impose the several taxes was independent and cumulative, and as the special tax did not exceed the sum of \$200, the by-law was *intra vires*, the proviso at the end of subsection *g* not applying to the whole section. Taschereau and Gwynne JJ. dissenting.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing a judgment of the Superior Court.

The proceedings were commenced in the Superior Court by a petition to annul a municipal by-law taken under section 4339 of the Revised Statutes of Quebec.

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

By the judgment of the first court one section only of the by-law, viz., section 3, which imposes a special tax of \$200 a year on hotel-keepers, &c., was declared *ultra vires* and illegal, and was set aside and annulled.

The judgment of the Court of Queen's Bench reversed this judgment and declared the said section and the tax thereby imposed to be *intra vires* of the municipal council. The clauses of the by-law and sections of the statutes under consideration on the present appeal are referred to at length in the judgments hereinafter given (1).

Panneton Q.C. for appellants, contended that the clauses 1 and 3, taken conjunctively, impose upon the hotel and restaurant keepers of the city of Sherbrooke "an annual tax, license, impost duty" exceeding two hundred dollars per year in connection with their occupation as hotel and restaurant keepers, in direct contravention of the clearly expressed provision of the law contained in the Quebec License Act, 927 *b*, 54 Vic. ch. 13, as amended by 55 & 56 Vic. ch. 11, sec. 26, by which it is enacted that it shall be lawful for the "municipal council of any city or town to levy by by-law, resolution or otherwise, any license, tax, impost or duty not exceeding two hundred dollars in any one year upon the holders of license for the sale of intoxicating liquors for the occupation for which they hold such license"; and that the charter of the city of Sherbrooke under which said by-law was enacted is subject to the provisions of the Quebec License Act.

The learned counsel referred to Endlich on Interpretation of Statutes (2); art. 4389 R.S.P.Q. and Dillon on Municipal Corporations (3).

Brown Q.C. for respondents, contended that the general powers of taxation conferred by the special Act

(1) See on the question of jurisdiction, 24 Can. S.C.R. 52.

(2) P. 8, pars. 5 & 7.

(3) 4 ed. pars. 91-793.

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could not be taken away by implication, and that the general tax imposed under clause 1 of the by-law, although hotel-keepers may be included in its terms, is not a tax imposed on the occupation of hotel-keeper as such, for the confirmation of a certificate or otherwise, but is a contribution to the revenues of the city that he, in common with all other classes, is called upon to make, irrespective of the nature of the business he carries on.

THE CHIEF JUSTICE was of opinion that the judgment of the Court of Queen's Bench should be affirmed, for the reasons given by King J.

TASCHEREAU J.—In 1892 the corporation of Sherbrooke passed a by-law for the purpose of imposing certain taxes in virtue of the powers conferred upon it by its special charter, 55 & 56 Vic. c. 51.

By sec. 1 of said by-law an annual business tax of five per cent on the annual value of the premises occupied, is imposed upon every person carrying on any trade, occupation or business in the said city.

By sec. 3 of the by-law a special tax of \$200 is imposed on every hotel-keeper, and on the keeper of every place wherein spirituous liquors are sold.

Are the hotel-keepers and other holders of licenses under the Quebec License Act, carrying on, exercising or having an occupation in the city, liable to both of the aforesaid taxes? is the naked question submitted to us.

The Superior Court (Lynch J.) held that they were not, and the Court of Appeals held that they were. The Superior Court was right, in my opinion.

By its charter, 55 & 56 Vic. c. 51 s. 55*b*, the corporation is empowered to impose a business tax on all trades, occupations and business. Sec. 1 of the aforesaid by-

law purports to have been passed under this enactment. By subsec. *g* of this same sec. 55 of its charter, the corporation is empowered to impose a special tax on keepers of houses of public entertainment, taverns and saloons, subject, however, to the provisions of the Quebec license law.

Sec. 3 of the aforesaid by-law purports to have been passed under this enactment.

Upon the words "subject, however, to the provisions of the Quebec License Law," the hotel and tavern keepers, holders of licenses under that law, claim that the council cannot impose on their occupation a tax exceeding \$200 a year, and that they cannot be taxed under both of the said sections of this by-law. The section of the Quebec License Law upon which they rely for their contention (927 *b*, enacted by 54 Vic. c. 13, sec. 30, amended by 55 & 56 Vic. c. 11 sec. 26) enacts that: (I read it as applied to this case) "The holder of any license under the Quebec License Act cannot be taxed by the corporation of Sherbrooke to an amount exceeding \$200 a year for the occupation for which he holds such license," or, in other words: "The occupation for which a license is held under the Quebec License Act, shall not be taxed by the corporation of Sherbrooke to an amount exceeding \$200 a year."

Now, is such holder of a license taxed by the corporation of Sherbrooke to an amount exceeding \$200 a year by the by-law in question, on the occupation for which he holds such license, if this by-law purports to impose on them both of these taxes?

To this question there is, in my opinion, room for only one answer. By the two said sections 1 and 3 of the said by-law, the occupation of a licensed hotel or tavern keeper is clearly made liable to a tax of over \$200 a year. And this puts an end to the case.

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The corporation has clearly no such right. The words, in subsec. *g* of sec. 55 of their charter subjecting their right under that section to the provisions of the Quebec License Law, must mean something, and if they do not mean that the aforesaid sec. 927 *b* of that law must be read as if it had been specially re-enacted in the charter, I am at a loss to understand what other meaning can be put upon them.

In other words, I read that subsec. *g* of sec. 55, as if, at the end thereof, the words "the whole however subject to the provisions of the Quebec License Law," were replaced by a proviso in these terms "provided, however that no licensed hotel, tavern or saloon keeper shall be liable to a tax on his occupation exceeding \$200 per annum."

And that both of these sections 1 and 3 of this by-law impose a tax on the occupation of the hotel-keepers and other license holders therein mentioned does not seem to me to require demonstration.

A tax such as the tax of \$200 imposed by sec. 3 of this by-law, on retailers of spirituous liquors is a tax on the occupation of retailing liquors (1). And the tax imposed by sec. 1 of that by-law is, in its own express terms, a tax on the occupation, amongst others, of licensed hotel-keepers and liquor retailers.

Now, when the corporation impose first a yearly tax of five per cent on the value of the premises wherein he carries on his business, or any one carrying on or exercising the occupation of a hotel-keeper, bearer of a license under the Quebec License Act, and at the same time impose upon him another yearly tax of \$200, I cannot see how it can be contended that they do not impose upon the holder of a license a tax exceeding \$200 a year for the occupation for which he holds such

(1) Hilliard on Taxation pars. 392-412.

license, in direct contravention of sec. 927 b, of the Revised Statutes as now in force.

If they had, in sec. 3 of the by-law, imposed a tax of over \$200, it is conceded that they would have exceeded their powers. Now, it cannot be that they have the power to evade the law, and do indirectly what they cannot do directly, simply by calling taxes by different names, or imposing them by different by-laws, or different sections of the same by-law. The law imposes on the corporation a restriction as to license holders, upon the unlimited power they would otherwise have under this subsec. g of sec. 55 of their charter. And this restriction was imposed, not for the benefit of the licensed retailers, not to favour them as a class, but to enable the government to tax them more heavily than they had ever been for provincial purposes.

That clearly appears from the 54 Vic. c. 13, wherein that restriction originated.

The provincial revenue on these licenses might also suffer a material decrease if the municipalities were allowed to exact any sum whatever, never mind how exorbitant, from the hotel-keepers, before they could get their provincial license. Great stress has been put, on the part of the corporation, on the argument that though the license holders, it must be conceded, are in the result made liable to a tax exceeding \$200 a year, by the combined operation of secs. 1 and 2 of their by-law, yet the by-law is legal, and the license holders fall within these two sections, because, as it was argued, the tax of \$200, under sec. 3, is a special tax on the occupation of hotel-keepers and liquor retailers as a special class, whilst the tax imposed by sec. 1 is a general tax on every occupation, and one for which the license holders are liable in common with all the other occupations or business, besides the special tax of \$200. I was at first struck with the argument, but, after con-

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sideration, it seems to me to rest on a fallacy. It is *petitio principii*, it assumes the very question to be determined.

Every business or occupation in Sherbrooke is liable, under sec. 55g to be, as a general rule, taxed to any amount per annum.

There is a restriction, however, as to the occupations for which licenses are held under the license law; these cannot be made liable to more than \$200 a year. The very object of that restriction is to make a difference for the benefit of the province, as I have said, between occupations upon which the province raises a large part of its revenues, by means of licenses, and those from which the province desires no such revenue; between licensed occupations and unlicensed occupations. On the latter the corporation has unrestricted powers; on the former, the province, depending on them itself in a large measure for a provincial revenue, has decreed that the corporation shall not have a right to impose a tax exceeding \$200 a year.

It is conceded by the appellants that this restriction applies only to a tax on the occupation, and that the license holders are liable to the other classes of taxes, such as the tenant's tax, for instance, which are imposed by the corporation. A tax on the occupation of hotel-keepers and others, for which a provincial license is held, is the only one in question in the case.

For these reasons I am of opinion that the appeal should be allowed with costs.

The judgment of the Superior Court, however, should be reformed. It declares sec. 3 of this by-law *ultra vires*. Now, why sec. 3 more than sec. 1? Sec. 3, by itself, is perfectly legal and within the powers of the corporation. It is the two, together, if applied to these license holders, that constitute an illegality, but an illegality as to them only.

If they are not made liable to the tax under sec. 1, they have no ground of complaint against sec. 3. The last paragraph of the judgment of the Superior Court should read: "Doth declare that all persons holding licenses in the said city, under the Quebec License Act, which are liable to the tax of \$200 imposed by sec. 3 of the said by-law, are not liable to the tax imposed by sec. 1 of the said by-law."

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The decree so framed, though not granting all the relief prayed for by the appellants, will be within the conclusions of the declaration that this by-law be declared illegal.

GWYNNE J. concurred with TASCHEREAU J.

SEDGEWICK J. was of opinion that the appeal should be dismissed for the reasons given by Mr. Justice King.

KING J.—I am of opinion that the reasons given by Mr. Brown are sufficient to support the judgment appealed from.

The action is for the annulment of municipal by-law no. 145, secs. 1 and 3, passed on 11th November, 1892, imposing an annual tax upon keepers of hotels, restaurants, etc.

The objection is that the necessary effect of these sections taken together is to impose a greater tax upon certain classes of persons than that permitted by the Quebec License Law (article 927 *b* R. S. Q., as amended by 54 Vic. c. 13, sec. 30, and 55 & 56 Vic. c. 11, s. 26.) That enactment is as follows:

It shall not be lawful for any Municipal Council of a city, town, village or other local municipality to levy by by-law, resolution or otherwise, any license, tax, impost, or duty, exceeding in any one year two hundred dollars in cities and towns, and fifty dollars in all other municipalities, upon holders of licenses under this law, either for the confirmation of a certificate to obtain a license or otherwise, for the occupations for which they hold such licenses.

The by-law in question was made under the act 55 & 56 Vic. ch. 51, intituled "An Act to revise and

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consolidate the charter of the city of Sherbrooke and the several acts amending the same," assented to on 24th June, 1892 and it is therefore necessary to determine the extent to which the powers of taxation granted by the special Act are limited by the prior general Act.

By sec. 55 of the special Act it is enacted that the council may, by by-law, impose and levy several different kinds of taxes. Thus, (by subsec. *a*), a tax on immoveable property not to exceed one and a half per cent of its value; by (subsec. *b*), a tax to be called "a business tax" on all trades, occupations, &c., not to exceed seven and a half per cent on the annual value of the premises where they are so carried on, a tax which, by a subsequent section is to be payable for every establishment of such trade, etc., when carried on by the same person in separate buildings or places of business in the city; by (subsec. *c*), a special tax on certain traders; by (subsec. *d*), a special tax on tenants; by (subsec. *e*), a special tax on dogs; by (subsec. *g*), a special tax in the discretion of the council on the proprietors or keepers of houses of public entertainment, taverns, saloons, restaurants, &c.; on brewers, distillers, wholesale and retail liquor dealers; on pedlars, &c., on theatres, &c.; on auctioneers, grocers, traders; manufacturers and other enumerated classes, "and generally on any commerce, manufacture, business or trade which has been or may be introduced into the said city, and exercised or carried on or followed therein, whether the same be or be not mentioned in this act, and whether they be or be not of the same description or kind as those herein enumerated, the whole, however, subject to the provisions of the Quebec License Law."

Then follow, by subsecs. *h*, *i* and *j*, other kinds of taxes authorized to be imposed, viz., taxes on vehicles

and horses, upon professional men, and upon the incomes of persons receiving wages or salaries. If the words at the close of subsec. *g*, viz., "the whole, however, subject to the provisions of the Quebec License Law," were at the close of the enumeration of authorized taxes, I should think that the contention of the appellant would have to prevail; but, looking at these words in their context, and at their position in the middle of the enumeration of the classes of taxes, it seems manifest that they have relation, not to the entire scheme of taxation, but to the special tax authorized by subsec. *g*. Of that tax, the incidence of which is expressed with some redundancy and repetition, it is declared that the whole is subject to the provisions of the Quebec License Law. The power to levy the several taxes is independent and cumulative. The amount of the "business tax," of subsec. *b*, is limited only by the maximum of seven and a half per cent fixed by the statute, a maximum that might yield a considerable amount in the case of several establishments carried on by the same person or company. On the other hand, the entirely independent power to levy the special tax, subsec. *g*, is in the discretion of the council as to amount, subject only to this, that a greater sum than \$200 shall not be so levied upon holders of licenses, under the Quebec License Law, for the occupations for which they hold such licenses.

These several limitations are not exceeded in the by-law in question, sec. 1 of which imposes the "business tax" under subsec. *b*, and sec. 3, the "special tax" under subsec. *g*. I therefore think that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for appellants: *Panneton, Mulvena & Leblanc.*

Solicitor for respondents: *J. T. L. Archambault.*

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