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*Jan. 20, 21, 23.

*June 22.

MARTIN LYNCH (PLAINTIFF).....APPELLANT;

AND

THE CANADA NORTH-WEST LAND COMPANY (DEFENDANTS).....} RESPONDENTS;

THE RURAL MUNICIPALITY OF SOUTH DUFFERIN (DEFENDANTS).} APPELLANTS;

AND

WILMOT F. MORDEN (PLAINTIFF).....RESPONDENT;

WILLIAM T. GIBBINS (DEFENDANT).....APPELLANT;

AND

BARBARA L. BARBER (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH OF MANITOBA.

Constitutional law—B.N.A. Act, ss. 91 & 92—Interest—Legislative authority over—Municipal Act—49 V. c. 52 s. 626; 50 V. c. 10 s. 43 (Man.)—Taxation—Penalty for not paying taxes—Additional rate.

The Municipal Act of Manitoba provides that persons paying taxes before Dec. 1st in cities and Dec. 31st in rural municipalities shall be allowed 10 per cent. discount; that from that date until March 1st the taxes shall be payable at par; and after March 1st 10 per cent. on the original amount of the tax shall be added.

Held, reversing the judgment of the court below, Gwynne J. dissenting, that the 10 per cent. added on March 1st is only an additional rate or tax imposed as a penalty for non-payment which the local legislature, under its authority to legislate with respect to municipal institutions, had power to impose, and it was not "interest" within the meaning of sec. 91 of the B.N.A. Act. *Ross* v. *Torrance* (2 Legal News 186) overruled.

APPEALS from decisions of the Court of Queen's Bench (Man.) (1).

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

(1) *Morden* v. *South Dufferin* 6 M. L. R. 515.

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The question raised on the three appeals is the same, namely, as to the power of the legislature of Manitoba to pass an act authorising municipalities to impose an addition of ten per cent. on taxes unpaid after a certain time from the assessment being made.

The act in question is sec. 626 of the act known as The Municipal Act of 1886, 49 Vic. ch. 52, as amended by 50 Vic. ch. 10 sec. 43. It provides that persons paying taxes before the first day of December in cities and the thirty-first day of December in rural municipalities shall be entitled to a reduction of ten per cent. ; taxes unpaid on those dates shall be payable at par until the first day of March following ; and if not then paid ten per cent. shall be added to the original amount.

The suit in Lynch's case was for specific performance of a contract for the sale of land by which the plaintiff agreed to pay the taxes assessed on the land and the balance of the purchase money in cash. In paying the taxes plaintiff paid the ten per cent. added on the amount on March 1st of each year and compounded in subsequent years and tendered to the defendant as the purchase money of the land the amount agreed less such taxes and interest. The defendant refused to accept this amount claiming that the addition of the ten per cent. was illegal. The appellant refused to pay more and brought his suit for specific performance.

The bill was dismissed without argument either on the hearing or before the full court, it being held that the case fell within the decision in *Morden* v. *South Dufferin* (1), which followed *Schultz* v. *City of Winnipeg* (2). The defendant appealed.

In *South Dufferin* v. *Morden* the taxes imposed on respondent's land were subject to the addition of 10 per cent., and respondent paid the addition under pro-

(1) 6 Man. L. R. 515. (2) 6 Man. L. R. 35.

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test having tendered to the appellants: first, the original amount of the tax imposed; and secondly, such amount with six per cent. added, both of which were refused. The action was brought to recover the amount added to the assessment and judgment was given against the municipality, the act being held *ultra vires* so far as the addition to the tax was concerned. The municipality appealed.

In *Gibbins* v. *Barber* land was sold by the respondent to the appellant, the latter agreeing to pay taxes and deduct the same from the purchase money. The same question arises on a refusal by respondent to allow the 10 per cent. addition to be so deducted.

The three appeals were argued together.

Kennedy for the appellants in *Lynch* v. *Canada North-West Land Co.* The interest mentioned in the B. N. A. Act, as to which the Dominion Parliament only can legislate, is interest on commercial matters and means merely the rate of interest.

Valin v. *Langlois* (1) and *Parsons* v. *Citizens Ins. Co.* (2) settle the mode by which the B. N. A. Act is to be construed. The whole scope and object of the act is to be considered, and so construing it the word "interest" in the 92 section cannot be held to apply to municipalities dealing with taxes.

The addition to the taxes provided for by the Manitoba act is not interest but merely a penalty.

Christopher Robinson Q.C., and *Tupper* Q.C., for the respondent. Interest is compensation for delay in the payment of money due. Tested by this definition the provision in this case clearly relates to interest and is *ultra vires* the provincial legislature.

The legislature in this same act twice calls the addition to the taxes interest, which is some evidence of their intention in passing it.

(1) 3 Can. S. C. R. 1. (2) 4 Can. S.C.R. 215; 7 App.Cas. 96.

The cases of *Ross* v. *Torrance* (1) and *City of Montreal* v. *Perkins* (2) settle the law as we contend here.

In *South Dufferin* v. *Morden Martin*, Atty. Gen. of Manitoba, appeared for the appellants and *MacTavish* for the respondent.

In *Gibbins* v. *Barber* Tupper Q. C. for the respondent stated that the counsel had agreed to submit the case on the factums the facts being substantially the same as in the other cases.

The three cases were decided together and the following judgments were delivered.

Sir W. J. RITCHIE C.J.—It is obvious that the matter of interest which was intended to be dealt with by the Dominion Parliament was in connection with debts originating in contract, and that it was never intended in any way to conflict with the right of the local legislature to deal with municipal institutions in the matter of assessments or taxation, either in the manner or extent to which the local legislature should authorizes such assessments to be made, but the intention was to prevent individuals under certain circumstances from contracting for more than a certain rate of interest, and fixing a certain rate when interest was payable by law without a rate having been named.

R. S. C. ch. 127. s. 1 provides :—

1. Except as otherwise provided by this or by any other act of the Parliament of Canada any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon.

2. Whenever interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be 6 per centum per annum.

The statute then deals with the question of interest on monies secured on mortgage in sections from three to

(1) 2 Legal News 186. (2) 2 Legal News 371.

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eight inclusive. The three next sections apply to Ontario and Quebec, the next six to the Province of Nova Scotia, and the next six to the Province of New Brunswick, then four to British Columbia, and three to Prince Edward Island.

It is abundantly clear that taxes are not contracts between party and party either express or implied, but they are the positive acts of the government through its various agents binding upon the inhabitants, and to the making or enforcing of which their personal consent, individually, is not required.

Dillon on Muncipal Corporations (1) has the following note:—

> Denying that taxes are debts, for which, without statute authority, actions may be maintained, see *Pierce* v. *Boston* (2) and numerous other cases ***. In an important case in the Supreme Court of the United States Justice Field states with clearness the distinction between "taxes" and "debts." "Taxes are not debts. It was so held by this court in the case of *Lane County* v. *Oregon* (3). Debts are obligations for the payment of money founded upon contract express or implied. Taxes are imposts levied for the support of the government, or for some special purpose authorized by it. The consent of the taxpayer is not necessary to their enforcement. They operate *in invitum*. Nor is their nature affected by the fact that in some states * * * an action of debt may be instituted for their recovery. The form of procedure cannot change their character. *Augusta* v. *North* (4); *Camden* v. *Allen* (5); *Perry* v. *Washburn* (6). Nor are they different when levied under writs of mandamus for the payment of judgments, and when levied for the same purpose by statute. The levy in the one case is as much by legislative authority as in the other." *Meriwether* v. *Garrett* (7). In *Dubuque* v. *Ill. Cent. Ry. Co.* (8) the text, section 815 (653) is quoted with approval and numerous cases are cited by the learned judge including *The Dollar Sav. Bank* v. *United States* (9).

Meriwether v. *Garrett* (7).

(1) 4 ed. vol. 2 p. 995.
(2) 3 Met. 520.
(3) 7 Wall. 71.
(4) 57 Me. 392.
(5) 26 N. J. L. 398.
(6) 20 Cal. 318.
(7) 102 U. S. 472, 513.
(8) 39 Iowa 56, 74.
(9) 19 Wall. 227.

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Field J:

Municipal corporations are mere instrumentalities of the State for the more convenient administration of local government. Their powers are such as the legislature may confer, and these may be enlarged, abridged, or entirely withdrawn at its pleasure. This is common learning, found in all adjudications on the subject of municipal bodies and repeated by text-writers.

The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity and the public welfare. In the distribution of the powers of government in this country into three departments the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare, and to provide the revenue for the support and due administration of the government throughout the state and in all its subdivisions. Having the sole power to authorize the tax it must equally possess the sole power to prescribe the means by which the tax shall be collected, and to designate the officers through whom its will shall be enforced.

City of Augusta v. *North* (1).

Appleton C. J.:

But a tax duly assessed is not a debt. It is an impost levied by the authority of the state upon the citizens. There is no promise on their part to pay. The proceedings throughout are *in invitum*. A debt is a sum due by express or implied agreement. It was held in *Pierce* v. *Boston* (2), that taxes being neither judgments nor contracts, were not the subject of set-off.

Nor are taxes [observes Shaw C.J.] contracts between party and party either express or implied, but they are the positive acts of the government through its various agents, binding upon the inhabitants, and to the making and enforcing of which their personal consent, individually, is not required.

In *Shaw* v. *Peckett* (3) it was held that the assessment of taxes did not create a debt that could be enforced by suit, or upon which a promise to pay interest could be implied. In *Lane County* v. *Oregon* (4) it was decided that the clauses in the several acts of congress of 1862 and 1863, making United States notes a legal tender for debts, had no reference to taxes imposed by state authority, the court holding that congress had in

(1) 57 Me. 39.
(2) 26 Verm. 482.
(3) 3 Met. 520.
(4) 7 Wall. 71.

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contemplation " debts originating in contracts or demands carried into judgment, and only debts of this character."

Chase C.J. says in *Lane County* v. *Oregon* (1) :—

The next case was that of the *City of Camden* v. *Allen* (2). That was an action of debt brought to recover a tax by the municipality to which "it was due. The language of the Supreme Court of New Jersey was still more explicit : "A tax, in its essential characteristics," said the court "is not a debt nor in the nature of a debt. A tax is an impost levied by authority of government upon its citizens, or subjects, for the support of the state. It is not founded on contract or agreement. It operates *in invitum*. A debt is a sum of money due by certain and express agreement. It originates in and is founded upon contracts express or implied."

We cannot attribute to the legislature an intent to include taxes under the term debts without something more than appears in the acts to show that intention.

The Supreme Court of California, in 1862, had the construction of these acts under consideration in the case of *Perry* v. *Washburn* (3). The decisions which we have cited were referred to by Chief Justice Field, now holding a seat on this bench, and the very question we are now considering, " what did Congress intend by the act " ? was answered in these words :—

Upon this question we are clear that it only intended by the terms debts, public and private, such obligations for the payment of money as are founded upon contract.

In the local legislature is vested the power to create municipal corporations and deal generally with municipal institutions, and to confer the right to impose or levy local rates, taxes and assessments upon the inhabitants and upon all property within the limits of the designated taxing district and to regulate the levying and collecting of such taxes in any manner it may deem most efficient. I care not by what name this 10

(1) 7 Wall. 80.

(2) 2 Dutcher 398.

(3) 20 Cal. 350.

per cent. may be called ; it was to all intents and purposes, in the case before us, an additional tax as the words of the act appear to me most unquestionably to indicate :

All taxes remaining due and unpaid on the 1st or 31st day of December (as the case may be) shall be payable at par until the 1st day of March following at which time a list of all the taxes then remaining unpaid and due shall be prepared by the treasurer or collector (as the case may be) and the sum of 10 per cent. on the original amount shall be added on all taxes then remaining unpaid.

What is this but an addition to the tax originally imposed ? But we are asked to read this as not an additional tax but as interest for an indefinite period without the slightest indication of any such intention except the fact that 10 per cent. is to be added to the tax, and thus producing the most unreasonable result that if the tax was paid the next day (say the 2nd day of March) the interest imposed would be 10 per cent. for the forbearance of payment for one day, a proposition to my mind too unreasonable to suppose the legislature ever could have contemplated such a consequence. But treating it as an increased assessment, imposed to stimulate the ratepayers to pay promptly, and if they do not then approximately to equalize the assessment rendered necessary by reason of the delinquency of the ratepayers, no such difficulty arises. It may be too large or it may be too small for the accomplishment of either of these purposes, but with this we have nothing to do. The legislature has vested in the municipality the power to impose taxes, and if they have acted within the power confided to them no court has a right to say that the amount imposed is too large or too small. But had it been specifically named as interest I am of opinion that it was an incident to the right of taxation vested in the municipal authority and, though more than the rate allowed by the Dominion statute in matters of contract, in no way in con-

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flict with the authority secured to the Dominion Parliament over interest by the British North America Act, but must be read, consistently with that, as within the power given to the local legislature under its power to deal with municipal institutions.

As I said in *The City of Fredericton* v. *The Queen* (1) approved by the Privy Council in *Russell* v. *The Queen* (2) in reference to the Dominion Parliament, so with reference to the Local Legislature:—

> The general, absolute, uncontrolled authority to legislate in its discretion in all matters over which it has power to deal subject only to such restrictions, if any, as are contained in the British North America Act and subject of course to the sovereign authority of the British Parliament.

In this case I can see no limitation with respect to municipal matters, which necessarily embraces the levying of taxes for municipal purposes and therefore falls within one of the classes of subjects enumerated in section 92, and assigned exclusively to the legislatures of the Provinces. Does not the collocation of number 19 "interest" with the classes of subjects as numbered 18 "Bills of Exchange," and 20 "legal tender" afford a strong indication that the interest referred to was connected in the mind of the legislature with regulations as to the rate of interest in mercantile transactions and other dealings and contracts between individuals, and not with taxation under municipal institutions and matters incident thereto? The present case does not deal directly or indirectly with matters of contract. The Dominion Act expressly deals with interest on contracts and agreements as the first section conclusively shows. The Chief Justice quotes, apparently with approval, the language of Mr. Justice Johnson in *Ross* v. *Torrance* (3) as follows:

(1) 3 Can. S.C.R. 505. (2) 7 App. Cas. 829.
(1) 2 Cartwright 352.

If they can give the corporation of Montreal, by thus merely changing the name of the thing, a legal right of 10 per cent. in the absence of an agreement between the parties, they can give it to the Bank of Montreal or any other creditor they choose to designate and the plain provisions of the constitution would become a dead letter.

In my opinion this is a *non sequitur* entirely unwarranted; limited as I have suggested no such result could possibly arise.

But it is alleged, as I have said, that it conflicts with the subject of interest secured by section 91 to the Dominion Parliament. But as was said in *Parsons* v. *The Citizens Ins Co.* (1):—

Sections 91 and 92 must be read together and the language of one interpreted, and where necessary modified, by that of the other.

And again:—

The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subjects to which it really belongs.

In the present case the legislature was not dealing or professing to deal with the question of interest but was dealing exclusively with taxation under municipal institutions, and the extra tax which the court below has chosen to call interest the legislature has not so denominated, but which the legislature imposed, no doubt, as I said before, as a means of securing payment, and also of approximately equalizing the rate between defaulters and those paying promptly. How can this be considered in any other light than as incidental to the power to levy the assessment as authorized by law, the principal matter of this act being municipal taxation and not interest, and so prevent the defaulter from gaining an undue advantage over the ratepayer who pays promptly? And who more competent to apportion this than the local legislature, and who more incompetent to

(1) 4 Can. S. C. R. 215.

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deal with this purely municipal matter than the Dominion Parliament charged with the affairs affecting the peace, order and good government of the Dominion?

The British North America Act having given the power of legislation over direct taxation within the Provinces in order to the raising of a revenue for provincial purposes, and over municipal institutions in the Provinces, exclusively to the Provincial Legislatures why should those bodies be restricted or limited as to the manner or extent to which those powers should be exercised? Why should they not be allowed to provide for the contingency of a failure to pay the taxes on the days and times fixed, and to make provision in such an event for an additional rate or tax, so that those failing to pay should be placed as nearly as may be on a footing with those who have paid promptly, equality being the rule dictated by justice and inherent in the very idea of a tax.

For these reasons I think the appeal should be allowed with costs in this court and in the court below.

STRONG and FOURNIER JJ. concurred.

TASCHEREAU J.—I am of opinion that section 626 of the Municipal Act imposes an addition of ten per cent. on unpaid taxes once for all and as a penalty. I would allow these appeals.

GWYNNE J.—These cases all depend upon the construction of section 626 of the Manitoba Municipal Act, 49 Vic. ch. 52, as amended by 50 Vic. ch. 10, and they raise the question whether that section is, or is not, *ultra vires* of the Provincial legislature. By sections 602 and 603 of 49 Vic. ch. 52 it was enacted that every municipality shall in each year after the final

revision of the assessment roll pass a by-law for levying a rate on all the property on the said roll liable to taxation, such rate to be levied equally on all the taxable property in the proportion of its value as determined by the assessment roll in force. Section 625 of 49 Vic. ch. 52 as amended by section 42 of 50 Vic. ch. 10 enacts that:—

The Council of any municipality may by by-law make the taxes payable by instalments at such times as they may think proper and fix and allow a discount for prompt payment of such instalments.

By section 634 of 49 Vic. ch. 52:—

The taxes or rates imposed or levied for any year shall be considered to have been imposed and to be due on and from the first day of January of the then current year, and end with the thirty-first day of December thereof, unless otherwise expressly provided for by the enactment or by-law under which the same are directed to be levied.

The words "and end with the 31st day of December thereof" do not seem to have been inserted very aptly or grammatically, but what the section means, I apprehend, is that in whatever period of a year the taxes are in point of fact imposed they shall, for the purposes of the act, be considered to have been imposed and due on the first day of January of that year, but cannot be levied by process of law until after the 31st day of December of that same year.

Then the 626 section of 49 Vic. ch. 52, as amended by the 43 section of 50 Vic. ch. 10, enacts that:—

In cities and towns all parties paying taxes to the Treasurer or Collector before the first day of December, and in rural municipalities before the thirty-first day of December, in the year they are levied shall be entitled to a reduction of ten per cent. on the same, and all taxes remaining due and unpaid on the first or thirty-first day of December, (as the case may be) shall be payable at par until the first day of March following, at which time a list of all the taxes then remaining unpaid and due shall be prepared by the Treasurer or Collector (as the case may be), and the sum of ten per cent. on the original amount shall be added on all taxes then remaining unpaid, and in cities a rate of $\frac{3}{4}$ per cent. at the end of each month shall added be

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upon overdue taxes, the same to commence on the first day of January from and after the year in which the rate shall have been levied and accrued due, whether the said taxes are due upon the ordinary collector's roll or upon any special tax of any nature whatever, such as frontage tax for street improvements or any other tax collectable by cities.

Then section 647 of 49 Vic. ch. 52 enacts that:—

When interest is due and payable on taxes in arrear such interest may be added to the taxes and shall be considered to form part of the taxes so in arrear.

Now what the municipal authorities did in *Lynch* v. *N. W. Land Co.* and in *The Municipality of South Dufferin* v. *Morden*, the lands there referred to being in rural municipalities, was this:—To the tax imposed for the year 1886, and which, as we have seen by the act, was declared to have been due on and from the first day of January in that year, they upon the first day of March, 1887, added 10 per cent., and upon the amount ascertained by the addition of these two sums with the tax imposed in 1887 they on the first March, 1888, added other 10 per cent., and so likewise on the first of March, 1889, upon the sum total of all the previous sums added together they added further 10 per cent.

In the case of *Gibbins* v. *Barber*, the land rated being in the city of Winnipeg, what was done was that to the rate imposed in 1889 they on the first day of January, 1890, and on the first day of each month until and including the month of June, 1890, added $\frac{3}{4}$ of one per cent. And the question is whether the imposition of these additional sums to the rates imposed by the municipalities was legal; that is to say, whether the sections of the acts purporting to authorize such additions to the imposed rates are *intra vires* of the Provincial legislature.

It becomes necessary, therefore, to inquire under what item of section 92 of the B. N. A. Act the sections objected to are to be ranked. The learned At-

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torney General of the Province of Manitoba, who was the counsel for the appellant in the *Municipality of South Dufferin* v. *Morden* repudiated all idea of the sections being attributed to, and of their having been passed under the authority of, any item other than that which enables the legislature of the Province to make laws in relation to municipal institutions in the Province. Upon the part of all the appellants it was insisted that the additional sums objected to were not and could not be regarded as being interest upon the rates imposed. Concurring with the learned judge, now Chief Justice, of the Superior Court of the Province of Quebec in *Ross* v. *Torrance* (1) I am of opinion that whatever name may be given to the charges they can be regarded in no other light than as sums charged by way of interest at the rate in rural municipalities of ten per cent. per annum for default in payment of the rates imposed within two months after the expiration of the year in which the tax is imposed, and so on at the same rate upon the whole sum from time to time remaining due on the first of March in each year until the land shall be sold for all arrears, thus charging ten per cent. compound interest per annum which is claimed as authorized by the above section 647, and in cities at the rate $\frac{3}{4}$ of one per cent. per month commencing on the first day of January in the year next following that in which the tax was imposed and fell due, that is to say, by the express terms of the act, on the first day of January of the year in which it was imposed. That this $\frac{3}{4}$ of one per cent. per month is charged by way of interest upon the rate imposed there can, I apprehend, be no doubt, and I can see nothing in the section to justify the construction that the ten per cent. added once in each year in rural municipalities should be regarded as different in any respect

(1) 2 Legal News 186.

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in character from the monthly charge of ¾ of one per cent. in cities, which would seem to have been considered about equivalent to ten per cent. per annum paid in one sum in each year until the land should be sold for the arrears. But that the sums so charged must be regarded as interest is, to my mind, clear from several sections of the original act and of that passed in amendment of it. Upon the completion of the tax roll the rate imposed in each year became a debt due to the municipalities, and by section 623 a notice is required to be immediately served upon each person rated whose residence is known demanding payment of the rate imposed, which notice—

> shall mention the time when such taxes are required to be paid and when the percentages herein mentioned will be allowed and charged.

The rate imposed by the municipality is the only sum recoverable as tax; the "percentage" spoken of in the section is something deducted from or added to the tax as the case may be. Now the section 647 already quoted provides that:—

> When interest is due and payable on taxes in arrear such interest may be added to the taxes and shall be considered to form part of the taxes so in arrear.

There does not appear to be anything in the act which can come under the term "interest" as used in this section unless it be the percentages added as above. Then section 655 of 49 Vic. ch. 52 as amended by section 48 of 50 Vic. ch. 10 enacts that:—

> If the land when put up for sale will not sell for the full amount of arrears of taxes due and charges the said Treasurer may then and there sell for any sum he can realize, and shall in such case accept such sum as full payment of such arrears of taxes; but the owner of any land so sold shall not be at liberty to redeem the same except upon payment to the Treasurer of the full amount of taxes due together with the expense of sale with a sum equal to ten per centum thereof, and the Treasurer shall account for the amount realized in such cases over and above all charges and the cost of publication, and in the

event of redemption as aforesaid to the purchaser for the amount of his purchase money with twenty per centum thereon.

The ten per centum which upon redemption is thus added to the sum total of arrears of taxes calculated as directed by section 647, and the costs attending the sale is provided in identical language with that used as to the ten per centum added to the amount of tax imposed in each year, and section 652 clearly shows that this ten per centum added on redemption is interest upon the amount composed of taxes in arrear added to the cost of sale and nothing else, for it enacts that:—

> When two or more lots or parcels of land have been assessed together the same may be advertised and sold together, but the owner of any such lot or parcel may redeem the same within the time hereinafter provided upon payment of a proportionate part of the taxes and charges for which the said lots or parcels were sold together with a proportionate part of the interest required to be paid on the redemption of same.

Then in connection with this section 652 the 667th section provides for redemption of lands sold for non-payment of arrears of taxes, namely, that the owner, his heirs, &c., may at any time within two years from the date of sale redeem the estate sold by paying or tendering to the treasurer for the use and benefit of the purchaser or his legal representative the sum paid by him, and all sums, if any, paid by the purchaser for taxes thereon since the sale, together with a sum amounting to ten per centum thereof if reedemed at any time within one year, and if not so redeemed within one year then with the addition of a further and additional sum equal to ten per centum thereof, &c. Now these sums of ten per centum so added on redemption, and which are provided for in language similar to the ten per centum added to the rate imposed in each year, if not paid before the first of March in each succeeding year, are what is spoken of in sec-

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tion 652, under the words "a proportionate part of the interest required to be paid in the redemption of same." Then section 672 of 49 Vic. ch. 52 enacts that no deed executed upon a sale for arrears for taxes shall be invalid for any error or miscalculation in the amount of taxes or interest thereon in arrear. There is nothing in the act to which the word "interest" as here used can apply unless it be to the said percentages added for default in payment of the taxes imposed at the time paid by the act for that purpose in each year.

Then sec. 53 of 50 Vic. ch. 10 enacts that all patented lands subject to taxation in any rural municipality shall be liable to be disposed of for "taxes, interest and charges" unpaid thereon up to the time of making up the list of lands so in arrears for the then current year which list the treasurer of every rural municipality is required to make as directed in the act. The word "interest" as here used can apply only to the percentage added for default in payment of the rate imposed in each year within the time specified in the act for that purpose as aforesaid. Then there are the sub-sections of this section which authorize the Government of the Province of Manitoba to become speculator general in the acquisition of all lands in rural municipalities liable to be sold for arrears of taxes.

Sub-sec. 2 requires the list required to be prepared by the Treasurer to be advertised in a prescribed manner once a week for three consecutive weeks within two months preceding a day to be named in the advertisement, which advertisement, sub-sec. 3 provides, shall contain a notification that unless the arrears of taxes and costs are sooner paid the treasurer will proceed to the disposal of the said lands on a day named in the advertisement. Then sub-sec. 4 enacts that when interest is due and payable on taxes

in arrear such interest may be added to the taxes and shall be considered as part of the taxes in arrear. Then sub-section 6 enacts that on the day appointed in such notice the treasurer shall transmit a copy of such list authenticated by the seal of the municipality attested by the signature of the reeve, the clerk and treasurer thereof to the Provincial Treasurer with a statutory declaration as to the correct amount of arrears of taxes, interest and costs then remaining due upon each lot or parcel of land mentioned in the list, to which shall be annexed a certificate under the seal of the municipality to the effect, among other things, that the taxes, interest and costs therein mentioned are still due, wherefore the reeve and treasurer of the municipality did grant, bargain and surrender unto Her Majesty, her heirs and successors, to and for the uses of the Province of Manitoba, all these certain parcels of land mentioned in the schedule thereunto annexed, and the sections then declare that such certificate shall have the effect of vesting absolutely all the lands in such schedule in Her Majesty to and for the uses of the Province of Manitoba. Then sub-section 7 enacts that upon the receipt by the Provincial Treasurer of such list, declaration and certificate the municipality shall be entitled to be paid the whole amount of arrears, interest and costs shown therein as still due, owing and unpaid out of the consolidated revenue fund of the province. Then the 54th section provides for the redemption of the several lands mentioned in the list by payment at any time within two years to the Provincial Treasurer of the sum paid by him to the municipality as taxes, interest and costs on such lands respectively, and all sums, if any, paid by the Provincial Treasurer under the act since then, together with a sum amounting to ten per cent. thereof if redeemed within one year, and if not so redeemed then with the

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addition of a further and additional sum equal to ten per centum thereof. Then the 57 section enacts that:

> In each year during the two years in which redemption of such lands may be effected as above provided, the Provincial Treasurer may pay out of the consolidated revenue fund of the province to the municipality in which such lands are situate, on the 1st day of May of each year, a sum equivalent to what the taxes, without interest, on said lands would have amounted to had they been held as private property and subject to taxation, and any amount so paid shall be included in the amount payable for the redemption of such lands and interest thereon as hereinbefore provided.

Now the amount which would have been due on the first of May in each year if the land had been held as private property would have been the tax imposed in the previous year with the ten per centum thereon added on the 1st of March following; this ten per centum is the only sum which can supply the word "interest" as there used, without which the municipality is compelled to accept payment from the Provincial Treasurer under this section, and the word "interest" as used in the last sentence of the section in connection with the words "thereon as hereinbefore provided" can mean nothing else than the sums of ten per centum by the 54th section required to be paid in each of the two years within which the lands may be redeemed. In fine it is, I think, quite clear from the manner in which the word "interest" is used in all of the above sections of the act that the percentages which the act purports to authorize to be added to the original tax imposed in each year if not paid at or before the time specified in the act for that purpose can be regarded in no other light than as interest charged for default in payment at the appointed time of the debt incurred by the imposition of the tax in each year. There is nothing in the clause of the British North America Act empowering Provincial legislatures exclusively to make laws relating to municipal

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institutions which requires the construction that the power assumed is authorized by that section. Municipal institutions as to taxes in arrear are creditors of the ratepayer by whom the tax is due, and if the power assumed exists in the case of municipal institutions in respect of a tax in arrear I can see no reason why it must not exist in the case of all creditors. The courts of the Province of Manitoba have, therefore, in my opinion, rightly held that the attempt to regulate the rate of interest which should be chargeable and recoverable by a particular creditor or a particular class of creditors against a particular debtor or particular class of debtors, for that and nothing else is what the section assailed, in my opinion, professes to do, is a usurpation of a power vested in the Dominion Parliament under the clause of the British North America Act which empowers that parliament to exercise exclusive legislative authority over the subject of interest.

I am of opinion, therefore, that the appeals in all three of the above cases should be dismissed with costs. The Provincial Legislatures can undoubtedly pass an act authorizing the issue by the Provincial Government of debentures payable with any rate of interest that may be agreed upon between the Government and its creditors or persons advancing money to the Government upon the security of such debentures, for such an act would be in the nature of a contract or legislative affirmation of a contract, and any rate of interest may be made payable by contract *inter partes*. But that is a case wholly different from the present.

PATTERSON J.—The respondents in these appeals maintain that a certain provision of a statute of Manitoba is *ultra vires* of the Provincial Legislature. The statute is 49 Vic. ch. 52. The 626th section of that statute, as amended by 50 Vic. ch. 10, sec. 43, holds

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out by way of inducement to the taxpayer to pay his taxes promptly the advantage of a reduction of the assessed amount if paid before a named day, and imposes, for the same reason, an increase on the assessed amount if not paid by another day which is mentioned.

If paid before the first day of December in cities and towns, or before the last day of December in rural municipalities, a deduction of ten per cent. is allowed. Between those dates and the first day of the following March the taxes are payable "at par," which means at the assessed amount. At the first of March a list of all the taxes then remaining unpaid and due is prepared by the treasurer or collector, and ten per cent. is added to the original amount of all taxes remaining unpaid. It is this addendum of ten per cent. that has been held to be unauthorised because it is considered to be interest on the assessed tax, and because "interest" is the designation given by section 91 of the British North America Act, 1867, to one of the classes of subjects assigned to the exclusive legislative authority of the parliament of Canada. The deduction of ten per cent. is not treated as objectionable. The offence against the constitutional act is discovered only in the added ten per cent., yet it is not at once apparent why one is not as much an encroachment as the other. The Manitoba act regulates the amount payable by each tax payer, according to the time he pays his taxes, in the ratio of 90, 100 and 110. If the computation which raises the 100 to 110 is to be classed with "interest," as that word is used in article 19 of section 91, I do not see why the computation which raises the 90 to 100, or reduces the 100 to 90, escapes from the same class. It is pretty much the same thing whether you add a percentage and call it interest or deduct a percentage and call it discount.

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I have no idea that either process, as employed in the adjustment of the amount to be exacted under the enactment in question, is a subject of the class denoted by the word "interest" in article 19.

We find that article associated with others numbered from 14 to 21 (1), all of which relate to the regulation of the general commercial and financial system of the country at large. No. 19 is *ejusdem generis* with the others and does not, in my judgment, include the matter of merely provincial concern with which we are now dealing. This is a phase of the subject which it does not appear to me that we are required to consider exhaustively at present. Nor need we definitely decide whether the imposition in question, which is not a percentage accruing *de die in diem*, but is the same on the second day of March as a year later, or any length of time later, is properly called interest. It is not so called in the section by which it is imposed though it is referred to in some other sections by the name of interest. The use of the word in the Manitoba act as a convenient name for the added percentage, or even as an appropriate name, is, of course, by no means conclusive of the thing so designated being interest within the meaning of that word as used in article 19 of section 91 of the B. N. A. Act. We must see what the thing really is. It is clearly something which the Manitoba taxpayer who does not pay his taxes when due is made liable to pay as an addition to the amount originally assessed against him or his property. It is a direct tax within the province in order to the raising of a revenue for provincial purposes, and as such is indisputably with-

(1) 14, Currency and Coinage; 15, Banking, Incorporation of Banks, and the Issue of Paper Money; 16, Savings Banks; 17, Weights and Measures; 18, Bills of Exchange and Promissory Notes; 19, Interest; 20, Legal Tender; 21, Bankruptcy and Insolvency.

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in the legislative authority of the Province. B. N. A. Act, 1867, sec. 92, art. 2.

I agree with the members of the court who have expressed that view and I do not attempt to elaborate it. But the imposition may, not improperly, be regarded as a penalty for enforcing the law relating to municipal taxation, and in that character it comes directly under article 15 of section 92.

I am of opinion that the appeal should be allowed.

Appeal allowed with costs.

Lynch v. *North West Land Co.*

Solicitor for appellant: *T S Kennedy.*

Solicitors for respondents: *McDonald, Tupper, Phippen & Tupper.*

South Dufferin v. *Morden.*

Solicitor for appellants: *C. P. Wilson.*

Solicitor for respondent: *J. B. McLaren.*

Gibbins v. *Barber.*

Solicitors for appellant: *Elliott & McCreary.*

Solicitors for respondents: *McDonald, Tupper, Phippen & Tupper.*