

THE CARLETON WOOLLEN COM- PANY (PLAINTIFFS)	} APPELLANTS;	1907
		*Feb. 26, 27. *March 13.
AND		
THE TOWN OF WOODSTOCK (DEFENDANTS)	} RESPONDENTS.	

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Municipal corporation—Exemption from taxes—Resolution of council—Discrimination—Establishment of industry—36 V. c. 81, s. 1 (N.B.).

By sec. 1 of 36 Vict. ch. 81, the New Brunswick Legislature authorized the Town Council of Woodstock from time to time to "give encouragement to manufacturing enterprises within the said town by exempting the property thereof from taxation for a period of not more than ten years by a resolution declaring such exemption." In 1892 the council passed the following resolution: "That any company establishing a woollen mill in the Town of Woodstock be exempted from taxation for a period of ten years."

Held, per Davies, Idington and Maclellan JJ. that this resolution provided for discrimination in favour of companies and against individuals who might establish a woollen mill or mills in the town and was therefore void. *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S.C.R. 239) followed.

Held, per Davies J.—The resolution exempting any company and not any property of a company was too indefinite and uncertain to be the basis for a claim for exemption.

In 1893 a woollen mill was established in Woodstock by the Woodstock Woollen Mills Co., and operated for some years without taxation. In 1899 the mill was sold under execution and two months later the Carleton Woollen Co., (appellants) were incorporated and acquired the said mill from the purchaser at the sheriff's sale and have operated it since.

Held, that the appellants could not by so acquiring the mill which had been exempted be said to have "established a woollen mill"

*Present:—Fitzpatrick C.J. and Davies, Idington, Maclellan and Duff JJ.

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without shewing that when it was acquired it had ceased to exist as such which they had not done.

Judgment appealed from, affirming that of Barker J. at the hearing (3 N.B. Eq. 138) affirmed.

APPEAL from a decision of the Supreme Court of New Brunswick (1) affirming the judgment of the judge in equity (2) who allowed a demurrer to the plaintiffs' bill.

An Act of the Legislature of New Brunswick, 36 Vict. ch. 81, sec. 1, authorized the council of the Town of Woodstock to exempt the property of manufacturing enterprises from taxation for ten years. The council passed a resolution providing that any company establishing a woollen mill in the town would be so exempt. The Woodstock Woollen Mills Co. established a mill and operated it without taxation until they got into financial difficulties when it was sold under execution and purchased by one White. Shortly after this the appellant company was incorporated and acquired the mill and machinery which they have operated ever since. For three years the company was not taxed but in 1902 and the two years following they were. In 1904 executions were issued for the taxes of 1902 and 1903 and a quantity of the company's goods were seized to satisfy the same. The company then filed a bill in equity to restrain the town from selling said goods to which the latter demurred. On argument of the demurrer it was allowed on the ground, not taken by defendants, that the resolution for exemption passed to the council discriminated between companies establishing a woollen mill and individuals doing the same. The plaintiffs bill was, therefore, dismissed. This judgment was affirmed by the full court and the Company appealed to the Supreme Court of Canada.

(1) 37 N.B. Rep. 545.

(2) 3 N.B. Eq. 138.

Carvell for the appellants. It was not necessary to state in the bill the authority under which the town council passed the resolution of exemption as all Acts of New Brunswick are by law public acts of which judges must take judicial notice without being specially pleaded. C.S.N.B. (1903) ch. 1, sec. 6; *Henderson v. The Mayor of St. John* (1); *The King v. City of St. John* (2); *Kiely v. Kiely* (3).

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The appellants either established a woollen mill or continued the old one established in the spring of 1893. If they established the mill they were entitled to the exemption for ten years. If they simply continued the old one, they were entitled to the exemption until and including the year 1903 which would include the taxes for the years for which the goods were seized.

The resolution creating the exemption was within authority under the Act above referred to. The statute is stronger than any of the Ontario statutes referred to by Barker J. in his judgment and specifically states that the council may from time to time, at their discretion, give encouragement to any manufacturing enterprises by exempting their property from taxation by resolution. The council is not prevented from extending the exemption to any other person or company and if they consider the existing resolution too narrow, they can rescind it at any time. Up to the present time it has not done so.

The expression "any company" in the resolution should be construed to mean and include "person" C.S.N.B. (1877) ch. 118, sec. 1 (31).

It might be open to a rival manufacturer or other

(1) 14 N.B. Rep. 197.

(2) 1 N.B. Rep. 155.

(3) 3 Ont. App. R. 438.

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tax-payer to attack the validity of this resolution on the grounds set forth by Barker J. in his judgment and followed by the court appealed from, but not to the municipality itself. The respondent is estopped from denying that the appellants are entitled to the exemption claimed, when relying upon the existence of the resolution; see 11 Am. & Eng. Encyl. (2 ed.) page 43. *Carr v. London and Northwestern Railway Co.*(1); *Pickard v. Sears*(2); *Freeman v. Cooke*(3); *Peoples Bank of Halifax v. Estey*(4).

Vince and *Hartley* for the respondent. The Act authorizes the council to exempt the property of manufacturing enterprises for a period not exceeding ten years, but the resolution purports to give exemption for ten years to any company establishing a woollen mill, and thus unfairly discriminated between companies and individuals, between woollen enterprises already established and companies which might afterwards establish such enterprises. The council exceeded its authority in exempting any company establishing a woollen mill when it was authorized by the Act to exempt only the property of manufacturing enterprises used in the actual prosecution of any such enterprise.

All municipal taxation must be imposed equally and uniformly and those who claim exemption must accept the onus of shewing clearly that they are entitled to it. The exemption should be denied unless it is so clearly granted as to be free from fair doubt. Such statutes must be construed most strongly

(1) L.R. 10 C.P. 307.

(2) 6 A. & E. 469.

(3) 2 Ex. 654.

(4) 34 Can. S.C.R. 429.

against those claiming the exemption. Dillon on Municipal Corporations, (3 ed.) sec. 776; *Jonas v. Gilbert*(1) *per* Ritchie C.J.; *Pirie v. Town of Dundas*(2); *Reg. v. Pipe*(3); *Re Nash and McCracken*(4); *Reg. v. Johnson*(5) at page 556; *People's Milling Co. v. Meaford*(6); *Rossi v. Edinburgh Corporation*(7); *City of Toronto v. Virgo*(8).

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The appellants have not alleged positively and with precision what is essential to their rights and within their knowledge. *Trites v. Humphrey*(9) at page 24; *Macnamara v. Sweetman*(10); *Woodward v. Cotton*(11); 1 Daniels' Chan. Prac. (5 ed.) 569; *Arcot v. East India Co.*(12); *Carnatic v. East India Co.*(13); *Bailey v. Birkenhead L. & C. Junction Ry. Co.*(14); *Foss v. Harbottle*(15). The bill is not sufficient; it does not set up the Act by authority of which the claim under the resolution was made.

The allegations in the appellants' bill do not shew that they did establish a woollen mill in the town and the facts disclosed shew that their business was conducted in the same building with the same plant and machinery and with part of the same manufactured and unmanufactured goods as had been owned and used by the Woodstock Woollen Mills Co. These facts are not sufficient to support the contention that the appellants established a woollen mill in the town. 1 Bouvier (ed. 1897) 691. *Hornsey Local Board v.*

(1) 5 Can. S.C.R. 356.

(2) 29 U.C.Q.B. 401.

(3) 1 O.R. 43.

(4) 33 U.C.Q.B. 181.

(5) 38 U.C.Q.B. 549.

(6) 10 O.R. 405 at p. 413.

(7) (1905) A.C. 21.

(8) (1896) A.C. 88.

(9) 2 N.B. Eq. 1.

(10) 1 Hogan 29.

(11) 1 C. M. & R. 44.

(12) 3 Bro. C.C. 292 at p. 308.

(13) 1 Ves. 371 at p. 393.

(14) 12 Beav. 433 at p. 443.

(15) 2 Hare 461.

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Monarch Investment Building Society(1); Hardcastle on Statutes 77. If the construction contended for by the appellants is to prevail, all that need be done by a company enjoying the exemption is, to reorganize or sell out every nine or ten years and so enjoy perpetual exemption.

For definition of "company" see *Smith v. Anderson* (2). As to estoppel see *Vestry of St. Mary, Islington v. Hornsey Urban District Council*(3) at page 705. As to loss of exemption on sale of property see *Polson v. Town of Owen Sound*(4); *Morgan v. State of Louisiana*(5). The exemption must be unmistakable. *Erie Ry. Co. v. State of Pennsylvania*(6) at page 498; 1 Cooley on Taxation (3 ed.) pp. 343, 356-361.

THE CHIEF JUSTICE.—I concur in the opinion of Mr. Justice Duff.

DAVIES J.—The appellants claimed exemption from taxation by the Town of Woodstock for a period of ten years under a resolution passed by the Town Council of that town in the year 1892, as follows:

That any company establishing a woollen mill in the Town of Woodstock be exempted from taxation for a period of ten years.

The authority under which the council assumed to act was a proviso added to sec. 1 of 36 Vict. ch. 81 [N.B.] (1873). This section which relates to the method of assessment within the town, contained the following:

- (1) 24 Q.B.D. 1.
- (2) 15 Ch. Div. 247.
- (3) (1900) 1 Ch. 695.

- (4) 31 O.R. 6.
- (5) 93 U.S.R. 217.
- (6) 21 Wall. 492.

Provided also that the council may from time to time at their discretion give encouragement to manufacturing enterprises within said town by exempting the property thereof from taxation for a period of not more than ten years by a resolution declaring such exemption.

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The trial judge held on a demurrer to the plaintiff's bill that the resolution under which the plaintiffs claimed exemption was bad because it violated the fundamental principle that municipalities in levying taxation or exempting property therefrom cannot discriminate between the same classes of tax payers within the municipality unless the legislative authority to do so is clear and explicit.

We had occasion very recently to consider this question in the cases of *The City of Hamilton v. Hamilton Distillery Co.* and *The Hamilton Brewery Association* (1), and reached the same conclusion on reasoning which we need not now repeat.

I agree that the principle prohibiting discrimination of the character referred to has been violated in the resolution under which the plaintiffs claim exemption and for that reason the resolution cannot be invoked to support plaintiff's contention.

It might be possible under legislation and resolution as crude and hard to construe as those under consideration for persons or companies to claim exemption from taxation, but I think the difficulties are very great and amending legislation is required to render the object in view effective.

The resolution professes to exempt "companies" establishing woollen mills in Woodstock from taxation. It does not extend to or include persons or individuals establishing such mills as distinct from companies. I do not know whether it means that the "companies" exempted were to be exempt from all

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taxation of every kind for the ten years whether on real estate, personal property, or income, and irrespective of the purposes for which the property was held or used. I suppose the idea may have been to exempt real estate actually used for manufacturing purposes only and not to include other real estate which might be owned by the company but used for workmen's houses or purposes of speculation. As a fact the resolution does not exempt any property *per se* but the company itself, and under that resolution, if held to be good and effective, a court has not the means of defining or deciding what particular property the company owned was exempt from taxation or what particular property remained liable. The statute under which the council professed to act did not authorize them to exempt any special class of citizens from taxation. What it did authorize was the exemption of *the property* (real and personal, I assume) of manufacturing enterprises by whomsoever carried on for a limited period. It was the property not the person or the company that was authorized to be exempted and the resolution to be effective under that statute or proviso must in some way have defined or described or identified the property intended to be exempted. It could not be successfully contended that the exempted property whatever it was could be ascertained or determined on by the assessors. They had no discretion in the matter and no means of determining on the property exempted. The only body in whom a discretion was vested and on the proper exercise of which alone the exemption could be created was the Town Council. That discretion was bound to be exercised in such a way as to avoid unfair discrimination between manu-

facturers at least of the same class, and I think also with sufficient certainty to enable the property exempted to be ascertained by the assessors and others upon whom the duty of levying and collecting the assessments fell.

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In my judgment the resolution is quite inoperative and ineffective on these essential points, and is too indefinite and uncertain to found an exemption upon.

It is not necessary for me to express any opinion on the other questions argued as to whether this company did as a fact establish a woolen mill within the meaning of the proviso relating to exemptions.

I think for the reasons given the appeal should be dismissed with costs.

INDINGTON J.—This is an appeal from the Supreme Court of New Brunswick unanimously upholding the judgment of Mr. Justice Barker in finding that the alleged resolution of respondents' council improperly discriminates and is therefore void and gives no such exemption from taxation as appellants claim.

I agree in that finding and therefore think the appeal must fail.

To prevent misapprehension, I may observe that the statute empowering the respondents to exempt from taxation in certain cases expressly authorizes the exercise of the power in question here by resolution of respondents' council, instead of, as usually is the case, by way of by-law.

I consider, however, that the same rule against improper discrimination is applicable to either by-law or resolution of a municipal council.

The rules of interpretation, that the pleading must

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be read most strongly against the^e pleader and that statutes conferring powers are to be strictly and literally carried into effect, applied to this case should also lead, I think, to a conclusion in favour of the dismissal of the appeal.

A special privilege such as the appellants claim must be legislatively expressed in language clear beyond reasonable doubt and made so to appear on the pleading setting it up before it can be held entitled to prevail.

The appeal should be dismissed with costs.

MACLENNAN J.—I am of opinion that the appeal should be dismissed.

Whatever may be said of the want of precision and certainty in the statute, I am clearly of opinion that the resolution is invalid as an unlawful discrimination. What the council was authorized by the statute to do was to encourage *manufacturing enterprises* by exempting the property thereof, etc. Such an enterprise might be by an individual or a partnership, or an incorporated company, but the resolution is confined to *companies*. An individual could get no benefit from it, no matter how meritorious his enterprise might be. See recent decision in the *Hamilton Brewery and Distilling Cases*(1).

On this simple ground I think the appeal should be dismissed.

DUFF J.—The appellant's bill does not, in my opinion, sufficiently allege a compliance with the condition prescribed by the resolution upon which the suit is based. The resolution provides: "That any

(1) 38 Can. S.C.R. 239.

company establishing a woollen mill in the Town of Woodstock be exempted from taxation for a period of ten years." This resolution must, on well-known principles, as against any claim to obtain the benefit of the exemption provided for, be construed strictly; that is to say, of two alternative constructions that which is the less favourable to the claim must be adopted.

Now, I think it would be a very liberal reading of this language which would support a claim to an exemption by one company in respect of a woollen mill which as a woollen mill had been established by another company, and in respect of which that other company had already had the benefit of the resolution.

Ex hypothesi the mill was already established; and although it may be that the language will bear a construction under which the putting into operation of a mill—which, having enjoyed the benefit of the exemption has ceased to operate—could be treated as a compliance with the condition, that I think is not the result of a strict reading of the words. In such a case I think the claimant must under the terms of the resolution strictly construed make out that the mill (in respect of which the exemption had been enjoyed) had, when acquired, ceased to exist as a woollen mill; not merely that its owners had ceased to operate it.

Upon the other questions discussed in the judgments below, I express no opinion.

Appeal dismissed with costs.

Solicitor for the appellants: *F. B. Carvell.*

Solicitor for the respondents; *J. C. Hartley.*

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