UPPER CANADA COLLEGE (PLAINTIFF) ..... APPELLANT;

AND

THE CORPORATION OF THE CITY OF TORONTO (DEFENDANT) ..... RESPONDENT.

1917

*June 7.
*June 22.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Assessment and taxes—Exemption from taxation—Local improvements—Petition—Signatures—R.S.O. [1914] c. 195, ss. 5 and 6—R.S.O. [1914] c. 193, ss. 47 and 48—R.S.O. [1914] c. 280, s. 10.

Rates for meeting the cost of local improvements under the Ontario "Local Improvements Act" are taxation.

By sec. 10 of its Act of incorporation the property of the Upper Canada College is "exempt from taxation in the same manner and to the same extent as property vested in the Crown." Sec. 5 of the "Ontario Assessment Act" provides that "the interest of the Crown in any property is declared to be exempt from taxation" and sec. 6 that "the exemption provided for by sec. 5 shall be subject to the provisions of the 'Local Improvement Act' as to the assessment of land for local improvements which would otherwise be exempt from taxation." The "Local Improvement Act" contains no express provision for levying rates on Crown lands and no machinery for collecting any such rates.

Held, that under this legislation the property of the Crown was not subject to assessment for the cost of local improvements and that of the Upper Canada College was also exempt.

By sec. 47 of the "Local Improvement Act" "the land of a University, College or Seminary of learning * * * exempt from taxation under the 'Assessment Act' * * * shall be liable to be specially assessed."

Held, that this section does not apply to land of Upper Canada College which is not exempt under the "Assessment Act" but under its own special Act.

Sec. 48 of said Act provides that "lands exempt from taxation for local improvements shall, nevertheless, for all purposes except petitioning for or against undertaking a work be * * * specially assessed" but the special assessment shall not be collectable from the owner.

Held, that under this section Upper Canada College is not an essential party to a petition for local improvements affecting its lands.

Judgment of the Appellate Division (37 Ont. L.R. 665), affirmed.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1), affirming the judgment at the hearing in favour of the respondent.

The action was brought by the College for a declaration that by-laws of the city ordering local improvement work to be done on the street on which the College property fronted were invalid as the College did not sign the petition for such work. The legislation relied upon is given in the above head-note.

Arnoldi K.C. for the appellant. Exemption from taxation does not embrace exemption from payment for cost of local improvements. *In re Leach and City of Toronto* (2), at pages 621 and 625; *City of Halifax* v. *Nova Scotia Car Works* (3); *Les Ecclesiastiques de St. Sulpice* v. *City of Montreal* (4).

The learned counsel also argued that the by-law was invalid for irregularity in procedure.

Fairty for the respondent.

THE CHIEF JUSTICE.—I agree with the judgment of the Appellate Division and for the reasons delivered by Mr. Justice Masten would dismiss this appeal.

DAVIES J.—I concur with the reasons given by Mr. Justice Anglin for dismissing this appeal.

IDINGTON J.—I am of the opinion that the appellant was not at the times in question liable to be specially assessed for the local improvement in question and hence has no right to complain. The appeal should, therefore, be dismissed with costs.

(1) 37 Ont. L.R. 665.
(2) 4 Ont. L.R. 614.
(3) [1914] A.C. 992.
(4) 16 Can. S.C.R. 399.

DUFF J.—By section 10 of ch. 280 R.S.O. 1914, all property of Upper Canada College is exempt from taxation to the same extent as property vested in the Crown for the public uses of Ontario. By section 5 s. s. 1 of the "Assessment Act," R.S.O. 1914, ch. 195, the interest of the Crown in any property is declared to be exempt from taxation. This enactment, however, must be read subject to the qualification imposed by section 6 of the same Act; the effect of which is, I think, clearly expressed in the argument of Mr. Fairty in his factum, and it is this: That as regards assessment for local improvements of land the exemptions created by section 5 are not to prevail as against the provisions of the "Local Improvement Act."

Turning now to the "Local Improvement Act," putting aside for a moment section 47, it is abundantly clear that there is nothing in the Act expressly aimed at the property of the Crown, and moreover, as Mr. Fairty points out, the Act contains no machinery for collecting local improvement taxes from Crown property; on the contrary, the first subsection of section 157 explicitly provides that no interest of the Crown shall be sold for arrears of taxes. Then as to section 47, that section, I agree, has no application here because it applies only to cases where the exemption is created by the "Assessment Act," the exemption enjoyed by Upper Canada College being created not by the "Assessment Act," but by its own special Act.

The result is that section 48 of the "Local Improvement Act" comes into play, by which it is expressly provided that land exempt from taxation for local improvements shall not be taken into account for the purpose of any petition under the Act. Such land is "assessed" in a qualified sense only; it is entered in the assessment roll and a valuation is set opposite to this

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entry, but that is done merely for the purpose of convenient book-keeping; because the taxes which would have been collectable had the land not been exempt from taxation are, by force of section 48, charged against the municipality itself.

The appeal should be dismissed with costs.

ANGLIN J.—The main ground of attack on the impugned by-laws is that Upper Canada College, which owns all the property abutting on one side of a projected extension of Oriole Avenue, in the City of Toronto, is liable to be specially assessed in respect of the cost of such extension, and that without its signature the petition for the work did not meet the requirements of sec. 12 of R.S.O. 1914, ch. 193:

> Sec. 12. The petition for the work shall be signed by at least two-thirds in number of the owners representing at least one-half of the value of the lots liable to be specially assessed.

I assume that the value of the lots owned by the appellant, if they were "liable to be specially assessed," in fact exceeded one-half of the value of all the property so liable.

The property of Upper Canada College is vested in a Board of Governors, a body corporate (R.S.O., 1914, ch. 280, sec. 3), and is

> exempt from taxation in the same manner and to the same extent as property vested in the Crown for the public uses of Ontario (sec. 10).

The question presented therefore is whether property so vested in the Crown is liable for local improvement taxation, that is, for the public uses of Ontario.

That rates levied to meet the cost of local improvements under the Ontario "Local Improvement Act" are "taxation" in my opinion admits of no doubt. Authorities binding on this court have so determined in

respect to strictly analogous rates levied in other provinces. *The City of Halifax* v. *Nova Scotia Car Works* (1), *Canadian Northern Railway Co.* v. *Winnipeg* (2), *Les Ecclesiastiques de St. Sulpice de Montreal* v. *City of Montreal* (3), at pages 403, 409. The Ontario "Local Improvement Act" (R.S.O. ch. 193) in sec. 48 itself terms such rates "taxation for local improvements."

By sec. 5 of the Ontario "Assessment Act" (R.S.O. 1914, ch. 195), "The interest of the Crown in any property * * * " is declared to be exempt from taxation. Nothwithstanding this provision, it is enacted by sec. 6 that:

> The exemptions provided for by sec. 5 shall be subject to the provisions of the "Local Improvement Act" as to the assessment for local improvements of land, which would otherwise be exempt from such assessment under that section.

The provisions of the "Local Improvement Act" thus referred to are ss. 47 and 48:

> Sec. 47. Land on which a church or place of worship is erected, or which is used in connection therewith, and the land of a university, college or seminary of learning whether vested in a trustee or otherwise, which is exempt from taxation under the "Assessment Act," except schools maintained in whole or in part by a legislative grant or a school tax, shall be liable to be specially assessed.
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> Sec. 48. Land exempt from taxation for local improvements under any general or special Act shall nevertheless, for all purposes except petitioning for or against undertaking a work, be subject to the provisions of this Act and shall be specially assessed; but the special assessments imposed thereon which fall due while such land remains exempt shall not be collected or collectable from the owner thereof but shall be paid by the corporation.

The very presence of sec. 47 affords an almost conclusive indication that but for its provisions the property which it describes would have been exempt under sec. 5 of the "Assessment Act" from local improvement rates as taxation. Indeed the language of sec. 6 of the "Assessment Act" makes this certain. Admittedly the

(1) [1914] A.C. 992; 47 Can. S.C.R. 406. (2) 54 Can. S.C.R. 589.
(3) 16 Can. S.C.R. 399.

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appellant is a University, College or Seminary of learning and it is not a

school maintained in whole or in part by a legislative grant or a school tax.

But, as Mr. Fairty pointed out, it is not

exempt from taxation under the "Assessment Act,"

but is so exempt under s. 10 of the "Upper Canada College Act" (R.S.O. ch. 280). Its property is therefore not within sec. 47.

No provision of the "Local Improvement Act" renders property of the Crown liable to taxation for local improvements and of course the Crown is not bound by such legislation unless specially mentioned.

Sec. 48, as will be readily perceived, *ex facie* deals with

lands exempt from taxation for local improvements.

While directing that such lands shall nevertheless be subject to the provisions of the Act for certain purposes, it specifically excludes therefrom those provisions which deal with petitioning for or against undertaking a work, and it enacts that while (no doubt for convenience in working out the scheme of the Act), lands so exempted shall be specially assessed, yet the assessments thereon shall not be collected or collectable from the owner but shall be paid by the municipal corporation.

These provisions make it abundantly clear that the legislature did not intend to restrict the generality of the exemption from taxation of property of the Crown, declared by sec. 5 of the "Assessment Act," by excluding from it local improvement taxation. Since the property of Upper Canada College is by its Act entitled to the same exemption as if it were property of the Crown and does not fall within the provisions of sec. 47 of the "Local Improvement Act" (designed to prevent the exemption of certain defined classes of religious and educational

property from general municipal taxation extending to local improvement rates), and there is no provision which renders it liable for such rates, it follows that it is exempted from them and that, although liable to be specially assessed under sec. 48, the municipal corporation must pay its assessment; and the fact that it is so assessed does not bring it within the provisions of the "Local Improvement Act" which deal with

petitioning for or against undertaking a work.

The appeal upon this point therefore fails.

The other questions involved in the appeal concern alleged unfairness on the part of the respondent corporation in the laying out of the proposed roadway and in the location of a sidewalk upon it. It suffices to say that these matters are peculiarly within the jurisdiction of the municipal council. No fraud or absence of good faith in the exercise of its powers has been shewn. Any exercise of its discretion short of a plain and manifest abuse of its powers is not subject to curial control, *Montreal* v. *Beauvais* (1), *United Buildings Corporation Ltd.* v. *Vancouver* (2), merely because some benefit therefrom has accrued to particular persons. No case of abuse has been made here.

Appeal dismissed with costs.

Solicitors for the appellant: *Arnoldi & Grierson.*
Solicitor for the respondent: *William Johnston.*

(1) 42 Can. S.C.R. 211. (2) [1915] A.C. 345.