CORPORATION OF POINT GREY. APPELLANT; 1922

*Feb. 9, 10.
*Mar. 29.

AND

WILLIAM SHANNON AND OTHER. RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Municipal corporation—Taxation—Assessment of lands—Agricultural purposes—Power of Court of Revision—Whether imperative or discretionary—Appeal—Jurisdiction—Judicial discretion—B.C. "Municipal Act," s.s. 3 (c) of s. 219, as enacted by 9 Geo. V., c. 63—"Act to amend the Supreme Court Act" 10 & 11 Geo. V. c. 32, s. 1, s.s. (b).

Subsection 3 (c) of section 219 of the B. C. "Municipal Act," as enacted by 9 Geo. V., c. 63, provides that *inter alia* "the powers of (the Court of Revision) shall be * * * to fix the assessment upon such land as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes, and during such use only at the value which the same has for such purposes without regard to its value for any other purposes."

Held, Duff and Anglin JJ. dissenting, that this provision is imperative and does not admit of any discretionary power in the Court of Revision; that it requires that court to fix at its agricultural value the assessment of all lands held in blocks of three or more acres; and that the only discretion given the court is that of finding whether the land is solely used for agricultural purposes.

Per Idington J.—Assuming such a provision to be discretionary, then this case would not be appealable to this court, as it is expressly excluded by s.s. (b) of the first section of the "Act to amend the Supreme Court Act" 10 & 11 Geo. V., c. 32.

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*PRESENT.—Sir Louis Davies C.J. and Idington, Duff, Anglin Brodeur and Mignault JJ.

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APPEAL from the judgment of the Court of Appeal for British Columbia (1), affirming, on equal division of the court, the judgment of Macdonald J. and maintaining the respondent's petition.

The respondents are the owners of 45·56 acres of land. In 1921, the assessor of the corporation appellant assessed part of this land at $2,700 per acre and the remainder at $2,250. The respondents appealed from this assessment to the Court of Revision of the appellant on the grounds that such land was and had been for several years used solely for agricultural purposes and should be assessed at the value which the same has for such purposes, without regard to the value for any other purposes, the respondents urging that the terms of s.s. 3 (c) of s. 219 of the B.C. "Municipal Act," [(B.C.) 1919, s. 63, s. 7] were mandatory. The Court of Revision dismissed the appeal and confirmed the assessment. On appeal to Macdonald J., it was held that the land was and has been used for agricultural purposes, and the assessment was reduced to $250 per acre. This judgment was affirmed by the Court of Appeal (1), on equal division of the court.

Lafleur K.C. for the appellant. The power of the Court of Revision is discretionary and not obligatory: *Julius* v. *Lord Bishop of Oxford* (2); *Rex* v. *Mitchell* (3).

McVeity for the respondents.

THE CHIEF JUSTICE.—This is an appeal from the Court of Appeal of British Columbia which on an equal division of opinion dismissed an appeal from the judgment of Mr. Justice McDonald who, in his turn

(1) [1921] 3 W.W.R. 442, 549. (2) [1880] 5 App. Cas. 214.
(3) L.R. [1913] 1 K.B. 561.

had allowed an appeal from the assessment of the Court of Revision assessing the lands of William Shannon and another, the now respondents, at their *actual* value and not at their *agricultural* value.

The learned judge held that on the proper construction of sec. 219 of the "Municipal Act Amendment Act," 1919, (9 Geo. V., c. 63) all the lands of the respondents lying to the west of Granville St. came within the amended section of the statute, clause (c) s.s. 3, and in being used for agricultural purposes should be assessed at an amount not exceeding $250 per acre.

The amended section of the Act of 1919 replaced a section of the Act of 1917 which was as follows:—

> The Court of Revision shall have power to reduce the assessed value of land held and used solely for agricultural or horticultural purposes to such an amount as may seem just and equitable notwithstanding that the same may be fixed thereby at an amount equal to its value for agricultural purposes. The section shall not apply to any lands the area of which is less than three acres.

That amended section reads as follows:

> The powers of such court shall be
> (c) To fix the assessment on such lands, as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes and during such use only at the value which the same has for such purpose without regard to its value for any other purpose or purposes.

The question in the appeal before us was whether this amended section was to be construed as discretionary or mandatory.

It is in my opinion necessary to read clauses (b) and (c) of s.s. 3 of sec. 219 of the Act of 1919 in order to gather their true meaning and intent.

Sub-section 3 of sec. 219 reads as follows:—

> 219 (3) The powers of the Court shall be:
> (a) To meet at the time or times appointed, and to try all complaints lodged with the assessor in accordance with the provisions of this Act;

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(b) To investigate the said roll and the various assessments therein made, whether complained against or not, and so adjudicate upon the same that the same shall be fair and equitable and fairly represent the actual value of each parcel of land and actual value of the land and improvements within the municipality; provided however, that the said court shall not during the year 1920 reduce the assessment of any parcel of land to an amount below ninety per cent of the amount for which such parcel of land was assessed on the assessment roll next preceding;

(c) To fix the assessment upon such land as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes, and during such use only at the value which the same has for such purposes without regard to its value for any other purpose or purposes.

Now clause (c) as I have said, was introduced into the Act of 1919 in substitution of the clause I have above quoted from the Act of 1917. That section vested in the Court of Revision a discretionary power

to reduce the assessed value of land held and used solely for agricultural or horticultural purposes to such an amount as may seem just and equitable.

It clearly vested in the Court of Revision a discretionary power to reduce the assessed value of lands held and used solely for agricultural purposes, but did not apply to any lands the area of which was less than three acres. It gave apparently no power to increase the assessment of such lands and its language was somewhat indefinite.

The amendment, clause (c) of sub-sec. 3 of sec. 219 of the Act of 1919 gave expressly no such discretionary power. Its language is mandatory and, in my opinion, clear and definite. The preceding clause (b) had vested a judicial discretion in the Court of Revision with respect to the various assessments made in the roll and so to adjudicate upon them that they

should be fair and equitable and fairly represent the actual value of each parcel of land and improvements within the municipality.

Clause (c), however, which follows, dealing with

lands held in blocks of three or more acres and used solely for agricultural or horticultural purposes and during such use only

explicitly directs the Court of Revision to

fix the assessment at the value which the same has for such purposes *without regard to its value for any other purposes.*

The general discretionary power given to the court by clause (b) does not and cannot in my judgment apply to such agricultural land. That is made an exception. The court is directed to fix the value which the land has for agricultural purposes only, and to make the intention of the legislature absolutely clear, the words are added

without regard to its value for any other purposes.

The court had to find first that the land was held in blocks of three or more acres and was used solely for agricultural purposes and when they had so found was to fix the value which the lands had

for such purpose without regard to its value for any other purpose or purposes.

No language could be used more clearly expressing the meaning of the legislature.

I can find no possibility of any discretion being vested in the court other than that expressly given. The court is directed to fix the assessment upon lands which they find exceed in area blocks of three or more acres and which are

used solely for agricultural or horticultural purposes * * * *at the value which the lands have for such purpose without regard to its value for any other purposes.*

I repeat I can find no room whatever for the introduction of any discretion on the part of the Court of Revision beyond that which the clause expressly gives of finding the value of the lands for agricultural purposes irrespective of its value for any other purposes.

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The reasonableness or unreasonableness of this provision is not of course open to consideration on our part. We have to deal only with the language used by the legislature which, as I have said, is in my opinion clear and distinct and not open to any doubt. Clause (c) is undoubtedly an exception to the general discretionary powers given and imposed upon the court by clause (b). The only discretion given the court in clause (c) is that of finding whether the lands are *bona fide* and solely used for agricultural or horticultural purposes, and when that is so found then the duty is imposed upon the court of assessing the lands at the value which the lands have for

agricultural purposes without regard to its value for any other purpose or purposes.

For these reasons I would dismiss the appeal with costs and so confirm the judgment of Mr. Justice McDonald.

IDINGTON J.—This is an assessment appeal which turns, if appealable, upon section 219 of the "Municipal Act Amendment Act," 1919, of British Columbia, which enacted as follows:—

219 (1). Every assessment roll shall be considered and dealt with by a Court of Revision, which shall consist of the members of the Council or five members thereof appointed for that purpose by resolution at the first meeting of the Council;

and by sub-section 3 thereof, as follows:

(3) The powers of such court shall be:—

(a) To meet at the time or times appointed, and to try all complaints lodged with the assessor in accordance with the provisions of this Act;

(b) To investigate the said roll and the various assessments therein made, whether complained against or not, and so adjudicate upon the same that the same shall be fair and equitable and fairly represent the actual value of each parcel of land and actual value of the land and

improvements within the municipality: provided however, the said court shall not during the year 1920 reduce the assessment of any parcel of land to an amount below ninety per cent of the amount for which such parcel of land was assessed on the assessment roll next preceding:

(c) To fix the assessment upon such land as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes, and during such use only at the value which the same has for such purposes without regard to its value for any other purpose or purposes;

(d) To direct such alterations to be made in the assessment roll as may be necessary to give effect to their decision.

It is sub-section (c) above quoted that we are especially herein concerned with, but I quote the other sections as means of illustrating the nature of the duty imposed by said sub-section (c) which is so much in dispute between the parties concerned herein that the Court of Appeal was equally divided.

The appellant contends that the said sub-section (c) gave only discretionary power to the Court of Revision to determine whether or not such lands as in question herein should be given or denied the partial exemption provided for under the circumstances indicated from taxation upon the full actual value of the properties in question.

It seems to me that if appellant's contention is correct then the duty of the Court of Revision was merely that of a regulative, administrative or executive jurisdiction, and, if so, there exists no jurisdiction in this court to hear this appeal for all such like cases are expressly excluded by s.s. (b) of the first section of the amendment of the "Supreme Court Act," 10-11 Geo. V, cap. 32.

I incline to the opinion that the legislature intended by said sub-section (c) to confer only a judicial discretion such as in the sub-section immediately before and after same, and imposed the duty thereby to exercise the power conferred.

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All the powers given by this sub-section 3 (c) of sec. 219, are classed thereby as of the same character and certainly most of them are clearly of a judicial character.

In either alternative this appeal should be dismissed with costs.

I very much doubt if now there is any way of getting special leave, to bring an assessment appeal before this court, as was suggested in argument herein, for section 41 of the "Supreme Court Act" which long was the basis for such appeals was repealed by said amending Act of 1920 just now referred to.

And the question arises as to whether what remains or is substituted, will permit of any leave to appeal.

The enumerated subject matters which may form the basis for such leave do not seem to comprehend assessment appeals.

DUFF J. (dissenting).—The single question raised by this appeal concerns the construction and effect of one of the enactments of the "Municipal Act Amendment Act" of 1919, c. 63. The enactment in question is clause (a) of s.s. 3 of sec. 219. Sub-section 3 enumerates the powers of the Court of Revision, and it will be convenient to set it out in full. It is in the following words:—

Sub-sec. 3. The powers of such Court shall be:—

(a) To meet at the time or times appointed, and to try all complaints lodged with the assessor in accordance with the provisions of this Act;

(b) To investigate the said roll and the various assessments therein made, whether complained against or not, and so adjudicate upon the same that the same shall be fair and equitable and fairly represent the actual value of each parcel of land and actual value of the land and improvements within the municipality: provided however, the said court shall not during the year 1920 reduce the assessment of any parcel of land to an amount below ninety per cent of the amount for which such parcel of land was assessed on the assessment roll next preceding;

(c) To fix the assessment upon such land as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes, and during such use only at the value which the same has for such purposes without regard to its value for any other purpose or purposes;

(d) To direct such alterations to be made in the assessment roll as may be necessary to give effect to their decision;

(e) To confirm the roll either with or without amendment.

(f) Any member of the court may issue a summons in writing to any person to attend as a witness, and any member of the court may administer an oath to any person or witness before his evidence is taken;

(g) No increase in the amount of assessment and no change in classification from improved to wild lands shall be directed until after five days' notice of the intention to direct such increase or change, and of the time and place of holding the adjourned sittings of the Court of Revision at which such direction is to be made, shall have been given by the assessor in the manner set out in section 214, to the assessed owners of the land on which the assessments are proposed to be increased or changed as to classification, and any party interested or his solicitor or agent if appearing shall be heard by the Court of Revision.

The respondents applied to the Court of Revision to have the authority reposed in that court by clause (c) exercised in relation to certain property of theirs in the municipality which had been valued by the assessor in the usual way, that is to say, in conformity with the rule laid down in section 207 of the Act that land "shall be assessed at its actual value." The application was rejected and on appeal to Mr. Justice Macdonald that learned judge held that by the clause in question a duty was imposed upon the Court of Revision as regards lands satisfying the description of the clause (lands held in blocks of three or more acres and used solely for agricultural or horticultural purposes) to "fix the assessment upon such lands" according to the standard laid down in the clause itself. There being no dispute upon the point that the respondents' property falls within the category described, the learned judge allowed the appeal. On appeal to the Court of Appeal the judges of that court

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were equally divided in opinion, the learned Chief Justice and Mr. Justice Galliher taking the view that a discretion is reposed by the clause in the Court of Revision and that the decisions of the court in exercise of that discretion are not reviewable on appeal; while the other two learned judges constituting the court, Mr. Justice McPhillips and Mr. Justice Eberts, sustained the view of Mr. Justice Macdonald.

The municipality now appeals. The British Columbia "Municipal Act" (for the purposes of assessment and taxation) provides for the appointment of an assessor whose duty it is in each year to prepare an assessment roll in which he is, among other things, to state the value of lands assessed, the value of improvements upon them and to classify all such lands as wild lands or otherwise; in valuing lands and improvements he is to follow the rules prescribed by sec. 207 already referred to. It is moreover the duty of the assessor, after having sent certain notices to make a statutory declaration to the effect that he has set out in the roll to the best of his judgment and ability "the true value of the land and improvements" within the municipality, to return the roll to the clerk of the municipality. The statute sets up a Court of Revision which is to consist of the members of the council or five members thereof appointed at the first meeting of the council and the Act explicitly provides that any person appearing on the roll as the owner of lands or improvements may, at any time not later than ten days before the first annual meeting of the court, complain of any error or omission in the assessment prejudicially affecting him and in particular that any land or improvement in respect of which he is assessed has been valued too high or too low. (Sec.

216 s.s. 1, 2). In the year 1917 by c. 45 of the statutes of that year, sec. 46, a provision was for the first time introduced authorizing the Court of Revision to deal with agricultural lands in a special way, and that provision was in these terms:—

> 223a:—The Court of Revision shall have power to reduce the assessed value of lands held and used solely for agricultural or horticultural purposes to such amount as may seem just and equitable, notwithstanding that the same may be fixed thereby at an amount equal to its actual value for agricultural purposes. This section shall not apply to any lands the area of which is less than three acres.

In the year 1919 the provisions of the "Municipal Act" relating to assessment and taxation were consolidated and extensively revised. This Act makes very important modifications, and sec. 223a now appears as sec. 219, s.s. 3 (c).

Section 219 is the first of a group of sections ending with section 222 which is introduced by the heading "jurisdiction and proceedings," and s.s. 3 of that section is, unquestionably, primarily a provision dealing with jurisdiction. The words, it will be noted are, "the powers of such court shall be" those which are set forth in the enumerated clauses. *Prima facie* this is not the language of legislation designed to confer or create substantive rights and when these clauses (other than clause (c)) are examined it will be found that, save in respect of one particular, the power given is a power to give effect to rights or to perform duties elsewhere provided for. Clause (a) for example, confers authority to try all complaints lodged in accordance with the provisions of the Act and that authority is an authority to effectuate the rights given and to perform the duty imposed by sec. 216, s. ss. 1, 2 and 3; the right to prefer the complaint on

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the one hand and on the other the duty to hear and decide upon the complaint. Sub-sec. (b) is an authority to examine the roll and to see that the same shall be equitable and fairly represent the actual value of the land and improvements, in other words, to see that the assessments have been made in conformity with the provisions of sec. 207 and to perform the duties imposed upon the court by sec. 219 s.s. 1, which requires that each assessment roll shall be considered and dealt with by a Court of Revision. Sec. (d) which gives authority to direct alterations in the assessment roll in order to give effect to the decisions of the court merely confers jurisdiction to carry out the duties imposed by sec. 216, s. ss. 1, 2 and 3. Clause (e) gives authority to confirm the roll either with or without amendment and that is an authority to carry out the duties imposed by sec. 222, s.s. 1 and by sec. 216, s. ss. 1, 2 and 3, where the court decides that the roll is unobjectionable.

Thus, with the exception of clause (b), it can be affirmed in respect of all clauses just referred to that the true office of them is that which is their *prima facie* office, namely, to confer jurisdiction and to give effect to rights or to perform duties elsewhere provided for. As regards sub-clause (b) authority is given to revise and to correct the roll in pursuance of a complaint which authority, as already mentioned, is an authority to do no more than to give effect to the rights and perform the duties provided for by sec. 216; but there is a further authority and that is to investigate assessments even in the absence of complaint and as regards the value of lands and improvements, to bring the assessed value in to accord with the value as determined by the standard laid down in sec. 207.

Now it seems to be abundantly clear that this last mentioned authority is a discretionary authority. In the first place it is incredible that the burden of examining every valuation, collecting evidence in relation to it and passing upon it should have been placed upon the board of revision. Again if such were the duty of the Court of Revision, the imperative duty of the Court of Revision, it is not easy to see the necessity for the enactments of sec. 216 requiring the board in terms to reconsider an assessment in respect of which complaint is made. In the second place the contrast between the language of sec. 216 which, in case of complaint, requires the board to proceed, and the language of sub-clause (b) which is facultative only, appears to be conclusive upon the point.

Coming now to clause (c). In relation to the matter dealt with in this clause, the sub-section, here as in relation to the other enumerated matters, professes simply to give jurisdiction. The words, as they stand, (to quote Lord Cairns, in the case of *Julius* v. *Lord Bishop of Oxford* (1),

> are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no authority to do. They confer a faculty or power and they do not of themselves do more than confer a faculty or power.

Nevertheless, as Lord Cairns points out, although such is the effect of the words in themselves, there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, making it a duty of the body in whom the authority is reposed to exercise that authority. But Lord Cairns proceeds:

> It lies upon those * * * who contend that an obligation exists to exercise (the) power, to shew in the circumstances of the case something which * * * creates this obligation.

(1) 5 App. Cas. 214, at p. 222.

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And the question as Lord Selborne lays down in the same case at p. 235,

> in general * * * is to be solved from the context of the particular provisions or from the general scope and objects of the enactment conferring the power.

The clauses of s.s. 3 other than clause (c) afford admirable examples of a power or faculty conferred by language in itself enabling only, which upon definite conditions it becomes by reason of provisions enacted *aliunde* the duty of the authority possessing it to exercise. For example clause (b) in so far as it gives jurisdiction to hear and decide complaints in respect of the valuation of property is a jurisdiction which the person assessed or the municipal council itself is entitled to invoke and which it is a duty of the Court of Revision to exercise where the party invoking it has complied with the conditions laid down in sec. 216, s.s. 1, 2 and 3.

The question upon which we have to pass is whether such a duty—with the correlative right—arises by virtue of clause (c), a duty which requires the court to exercise the authority thereby given when it is shewn that a piece of property falls within the description supplied by the clause; and for this purpose we must examine the pertinent provisions of the statute relating to this subject of assessment and assessment appeals to ascertain whether there is adequate evidence of an intention on the part of the legislature to establish the right and the duty contended for.

There is nothing in the provisions of the Act in express terms conferring such a right or creating such a duty. On the contrary there is much in the Act to indicate that the legislature had no intention of doing so. In the first place, what I have already said sufficiently indicates that where an imperative duty was

to be laid upon the Court of Revision the legislature has imposed the duty in explicit terms. In the next place, the system of assessment, as I have already mentioned, contemplates a valuation in the first instance by an assessor, according to standards of valuation laid down in obligatory fashion by the statute. These obligatory standards of valuation are standards which are dealt with in elaborate terms in a part of the Act exclusively devoted to that purpose and grouped under the heading "valuation." There is not a syllable in its provisions giving countenance to the idea that any such obligatory standard as is now contended to be applicable to this case was contemplated. The function of the Court of Revision is in general that which is implied in its title; and perhaps still more clearly implied in the terms of the oath prescribed for the members of the court by sec. 219, s.s. 2. It is a court appointed for the purpose of revising the assessment roll, correcting the work of the assessor and causing the assessment roll as made up by the assessor to conform to the requirements of the statute where such requirements are of an obligatory character. According to the interpretation now proposed, an exception would be introduced and a departure from this rule for which there appears to be no satisfactory reason. I cannot conceive any reason why (if in the case of lands meeting the description of clause (c) the standard of valuation is that which is now suggested) the statute has not made it the duty of the assessor in the first instance to deal with the subject. The assessor has responsible duties; it is his duty as already pointed out, to value lands and to classify lands, and I have heard no reason why, if the provision in question is to have the effect contended for, there should have been this departure from the

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ordinary procedure. The amendment of 1917 clearly gave to the Court of Revision an authority which was discretionary; and having regard to the considerations mentioned the doubtful language (conceding for the moment that it is doubtful) of clause (c) does not, I think, afford sufficient evidence that the legislature contemplated a change of the law in this respect.

It is not necessary for the purpose of this appeal to decide whether or not the discretion vested in the Court of Revision is one which may be exercised in relation to individual cases; or, on the other hand, whether the clause is not intended to confer upon the Court of Revision an administrative authority to establish in its discretion a rule governing the valuation of all lands in the municipality answering the description contained in the clause. It is quite plain on either view that it is not competent to a court of appeal to set aside a decision of the Court of Revision in exercise of its discretion on the ground that it has erred in exercising it.

The appeal should be allowed.

ANGLIN J. (dissenting).—I concur with Mr. Justice Duff.

BRODEUR J.—The question in this case is whether agricultural or horticultural lands in the municipality of Point Grey should be assessed as such or should be assessed at their actual value.

The Court of Revision that has been established for the purpose of "confirming and authenticating" the assessment roll is composed of the members of the council or of five members thereof. The members of the court, before acting, take an oath that they will

honestly decide the complaints presented to the court. The powers of the court are to be found in sec. 219, s.s. 3 of the Municipal Act of British Columbia. It has the power to investigate the roll, whether complained of or not, and to adjudicate that the same shall be fair and equitable. One of those powers is

> to fix the assessment upon such land as is held in blocks of three or more acres and used solely for agricultural or horticultural purposes, and during such use only at the value which the same has for such purposes without regard to its value for any other purpose.

The Court of Revision in the present case refused to assess Shannon's property as agricultural lands. An appeal from that decision having been brought before Mr. Justice Macdonald, the Court of Revision's decision was reversed and it was held that, the lands in question being used solely for agricultural or horticultural purposes, it was the duty of the Court of Revision to assess them as such and that the power which was given the court was not discretionary but mandatory.

Some previous legislation dealing with the same subject for the first time in that province might have been properly construed as giving a discretionary power to the Court of Revision. But the law was amended, and the evident purpose was to impose a duty which formerly was of a discretionary nature.

There is no doubt that the land in question has been for thirty years or more a true agricultural land and has been exploited as such. Its value has been increased by the fact that the surrounding properties have become a residential part. If it were converted into town lots, it would give a larger income but their owners are satisfied to continue its exploitation as a farming land.

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Brodeur J.

The legislature, with the evident intention of encouraging agriculture, has enacted the legislation under review.

In *Julius* v. *Lord Bishop of Oxford* (1), Lord Selborne said, p. 235, respecting the construction of the words: "it shall be lawful, and the like, when used in public statutes":

> I agree with my noble and learned friends who have preceded me, that the meaning of such words is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation. The question whether a judge, or a public officer, to whom a power is given by such words, is bound to use it upon any particular occasion, or in any particular manner, must be solved *aliunde*, and, in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power.

All the powers which are vested in the Court of Revision in the different subsections of section 219 of the "Municipal Act" are of a mandatory character with the exception of the investigating power; why should the power given as to agricultural lands not be put on the same footing?

I have come to the conclusion that the words in question are "significant of an obligation" to use the expression of Lord Selborne, and that it was then the duty of the Court of Revision to use its powers for the benefit of the farmers and horticulturists of good faith whose farms are in the territory of Point Grey.

The appeal should be dismissed with costs.

MIGNAULT J.—This is an appeal from the judgment of the Court of Appeal of British Columbia, dismissing on an equal division an appeal from the judgment of Mr. Justice Macdonald. The latter decided, in

(1) 5 App. Cas. 214.

favour of the respondents, an appeal from the decision of the Court of Revision of the Corporation of Point Grey, a suburb of the City of Vancouver, and his judgment is attacked by the appellant.

The question to be decided, briefly stated, is whether, in the case of the assessment of lands coming within the contemplation of paragraph (c) of sub-section 3 of section 219 of the "Municipal Act Amendment Act" of 1919, 9 Geo. V, c. 63 ,the Court of Revision has any discretion to refuse to fix the assessment of the lands at the value they have for agricultural or horticultural purposes without regard to their value for any other purposes.

Mr. Justice Macdonald found all the facts in favour of the respondents holding that their land was acquired in 1890, and has ever since been used by them solely for agricultural purposes, and that there was no suggestion that they were simply utilizing their property in this manner for the purpose of coming within the provisions of the statute. The only question that now arises is therefore the proper construction of the statute.

Referring very briefly to the system of municipal assessment and taxation in British Columbia, I may say that properties are assessed at their actual value by a municipal officer known as the assessor. From this valuation an appeal lies by a complaint lodged with him to a body called the Court of Revision consisting of the members of the municipal council or five members thereof appointed for that purpose by resolution of the council. This court, the statute shews, is the real assessing body.

The duties of the Court of Revision are laid down in detail by section 219 of the statute, subsection 3, which is in the following terms: (see page 559).

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Mignault J.

The assessment in question is for the year 1921, so the proviso of paragraph (b) is without application.

The construction of paragraph (c) is in issue between the parties. This provision before 1919, and as enacted by the "Municipal Amendment Act" of 1917, ch. 45, sec. 46, read as follows:—

> The Court of Revision shall have power to reduce the assessed value of lands held and used solely for agricultural or horticultural purposes to such amount as may seem just and equitable, notwithstanding that the same may be fixed thereby at an amount equal to its actual value for agricultural purposes. The section shall not apply to any lands the area of which is less than three acres.

It is important to note that the earlier enactment probably conferred a discretionary power on the Court of Revision, which, in the case of land held and used solely for agricultural or horticultural purposes, could reduce the assessed value of the land to such an amount as might seem just and equitable, so that the valuation might be placed anywhere between the actual value and the value for agricultural purposes.

The change in the language of this enactment is an important factor in arriving at its proper construction. There is no question now of reducing the assessed value of the land to such an amount as may seem just and equitable, but the power of the Court of Revision is to *fix* the assessment upon the land in question at the value which it has for agricultural or horticultural purposes without regard to its value for any other purposes.

The appellant contends that the Court of Revision may refuse to so fix the assessment although the land comes within the description of paragraph (c); that it can have regard to the value of the land for other than agricultural or horticultural purposes; and that

it can discriminate between different agricultural or horticultural lands, and in some cases fix the assessment at the agricultural or horticultural value, and in other cases refuse to do so.

This appears to me so contrary to the plain language of the statute that I cannot accept the appellant's contention.

An effort no doubt should be made to give to permissive words in a statute their natural meaning, but it is equally clear that where a jurisdiction or a power is conferred to be exercised for the benefit of certain persons who are within the intendment of the statute, permissive words such as "may" or "shall have the power" are to be construed as imposing a duty coupled with a power and are therefore imperative. In *Macdougall* v. *Paterson* (1), it was held that where a statute confers an authority to do a judicial act in a certain case, it is imperative on those so authorized to exercise the authority when the case arises, and its exercise is duly applied for by a party interested, and having the right to make the application. See also *Howell* v. *The London Dock Co.* (2).

I have not overlooked the rule of construction contained in the British Columbia "Interpretation Act," R. S. B.C. 1911, ch. 1, sec. 25, as to the meaning of words such as "may" or "shall," but these rules apply only where there is nothing in the context or in other provisions pointing to a different meaning, and here I find in the context and accompanying provisions a clear indication that the power conferred by paragraph (c) must be exercised.

(1) [1851] 11 C.B. 755.

(2) [1858] 27 L.J.M.C. 177.

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Mignault J.

Subsection 3 opens with the words: "the powers of such court shall be." Paragraph (a) concerns the meeting of the court at the time or times appointed. This is surely imperative. Paragraph (b) requiring the court to investigate the roll and the various assessments, whether complained against or not, and to so adjudicate that the same shall be fair and equitable is also imperative. Paragraph (d)

> to direct such alterations to be made in the assessment roll as may be necessary to give effect to their decision,

and paragraph (e) "to confirm the roll either with or without amendment" are certainly mandatory. The only paragraph which possibly allows the court to deal with a matter of policy is paragraph (g) which refers to increases in the amount of assessment and to changes in classification from improved to wild land; the other paragraphs I have mentioned impose a duty on the court.

Under these circumstances, in the absence of apt words conferring a discretion, such perhaps as those contained in the 1917 enactment, it seems difficult to conclude that paragraph (c) is not as imperative as paragraphs (a), (b), (d), and (e) undoubtedly are.

It is said that in the case of the suburbs of a large city like Vancouver, it is unreasonable to value lands solely used for agricultural or horticultural purposes on a different scale from the neighbouring lands not utilized for such purposes, and that the Court of Revision should have the discretion to discriminate between lands so situated and lands in an entirely rural district. It suffices to answer that paragraph (c) makes no such distinction. To refuse to fix the value for agricultural or horticultural purposes would be to refuse to exercise the power conferred by this

paragraph and, in my opinion, that cannot be done. The court is called upon to determine whether the conditions contemplated exist and if they do exist it has no choice but to fix the lower value. This determination is the only thing the court is empowered to adjudicate upon and when this is done, it must apply the legal consequences. Otherwise it would give effect to the will of the legislature in one case and in a similar case, in so far as the contemplated conditions are concerned, it would refuse to carry it out. I cannot place this construction on paragraph (c).

The authorities cited by Mr. Justice Macdonald in the first court and by Mr. Justice Martin and Mr. Justice McPhilips in the Court of Appeal certainly support the conclusion they have adopted, and looking at sub-section 3 as a whole, this construction appears to me to give full effect to the scheme of assessment and taxation which the legislature has placed on the statute book.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

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