

1965
 *May 27
 June 24

THE CITY OF MONTREAL (*Defendant*) . . . APPELLANT;

AND

WESTON BAKERIES LIMITED

(*Plaintiff*) RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
 APPEAL SIDE, PROVINCE OF QUEBEC

Municipal corporations—Bakery having place of business outside city limits—Products sold at wholesale to merchants and distributed by trucks inside city limits—Whether exemption from having to pay for permits and licences—Action to recover moneys so paid—Municipal Tax Exemption Act, R.S.Q. 1941, c. 221, s. 6.

The plaintiff carried on a bakery business in the town of Jacques-Cartier. It had no property or place of business in the city of Montreal. Its products were sold and distributed exclusively to merchants in the ordinary course of their business, and were sold at wholesale only. During the years 1949, 1950 and 1951, the plaintiff paid over \$900 to obtain licences and permits for the purpose of distributing its products in the city of Montreal. This action, which was dismissed by the trial judge, was brought by the plaintiff to recover this money. The Court of Appeal reversed the judgment at trial and maintained the action. The defendant municipality was granted leave to appeal to this Court.

Held: The appeal should be dismissed.

Section 6 of the *Municipal Tax Exemption Act*, R.S.Q. 1941, c. 221, provides that no municipality shall oblige a person not having a place of business in the municipality to procure a licence in order to take orders for, and to sell and deliver merchandise, if these operations are only carried on with merchants in the ordinary course of their business. The plaintiff clearly came within the provisions of that section and was entitled to the protection which it afforded.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec¹, reversing a judgment of Ralston J. Appeal dismissed.

*PRESENT: Taschereau C. J. and Fauteux, Abbott, Ritchie and Hall JJ.

¹ [1962] Que. Q.B. 52.

Jean Mercier, Q.C., for the defendant, appellant.

P. E. Kierans, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This is an appeal by leave, from a majority judgment of the Court of Queen's Bench¹, rendered October 2, 1961, which reversed a judgment of the Superior Court dated May 2, 1955 and maintained respondent's action in the sum of \$926.10 with interest from December 4, 1951, and costs.

Respondent is a corporation carrying on the bakery business in the Town of Jacques Cartier in the Province of Quebec.

On November 12, 1951, respondent took action against the appellant to recover \$926.10 paid by respondent to appellant during the years 1949, 1950 and 1951 for permits and licenses in accordance with certain by-laws of appellant, as having been paid in error.

Respondent has no property or place of business in the City of Montreal. Its products are sold and distributed exclusively to merchants, traders or manufacturers in the ordinary course of their business, and are sold at wholesale only. Respondent's products are not sold directly to consumers, but are distributed in the City of Montreal by its driver-salesmen who load their vehicles at respondent's place of business in the Town of Jacques Cartier. The driver-salesmen maintain a record of the inventory of each of their customers and order their requirements from respondent two days in advance on the basis of the customers' previous sales record for each particular week-day.

All vehicles used by respondent in the distribution of its products are registered in respondent's name at its place of business in the Town of Jacques Cartier.

Appellant sought to oblige respondent to obtain licenses and permits for the purpose of distributing its products in the City of Montreal and to pay the fees imposed therefor under ss. 3 and 5 of appellant's by-law No. 1862. Subsidiarily, appellant has also invoked its by-laws No. 926 and No. 283.

The principal point in issue in the present appeal relates to the application of s. 6 of the *Municipal Tax Exemption Act*, R.S.Q. 1941, c. 221, as amended, which reads:

¹ [1962] Que. Q.B. 52.

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6. Notwithstanding any other general law or special act, no municipal corporation shall oblige a person not having a place of business in the municipality to pay or to procure a license in order to take orders for, and to sell and deliver merchandise, if these operations are only carried on with merchants, traders or manufacturers in the ordinary course of their business.

This section, which had its origin in the statute 50 Vict., c. 15, has undergone a series of amendments over the years, by which the exemption provided for has been extended. The most recent amendment prior to these proceedings was made by the statute 4 Geo. VI, c. 48, s. 1.

In my opinion the respondent clearly comes within the provisions of the said s. 6 of the *Municipal Tax Exemption Act* as amended, and is entitled to the protection which it affords.

I adopt as my own the following statement of Bissonnette J. in the Court below:

Si l'on faisait la genèse de cette loi qui remonte à 50 Vict. chap. 15, on y relèverait plusieurs tempéraments que le législateur y a apportés. D'une loi qui sur les refontes de 1888, 1909 et 1925 ne se rapportait qu'à l'exemption des commis voyageurs de certaines taxes, on en étendit les cadres de façon quasi-illimitée pour les non-résidents d'une corporation municipale. En effet, la loi 4, Geo. VI, chap. 48, art. 1, a substitué le mot 'personne' à la locution 'commis voyageurs', de sorte que, selon le texte de l'art. actuel ci-haut reproduit, une corporation municipale, en dépit de sa charte, ne peut obliger une personne (ceci comprend une société ou une compagnie) 'n'ayant pas de place d'affaires à payer des taxes ou à se munir d'un permis' quand elle ne fait que le commerce de gros. Or, tel est là le genre d'affaires exercées par l'appelante. D'où il faut conclure que celle-ci a été illégalement taxée.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Attorneys for the defendant, appellant: Parent, McDonald and Mercier, Montreal.

Attorneys for the plaintiff, respondent: Senecal, Turnbull, Mitchell, Stairs, Kierans, and Claxton, Montreal.