

ARCHIBALD YORK (PLAINTIFF) APPELLANT;
 AND
 THE CITY OF EDMONTON (DE- }
 FENDANT) } RESPONDENT.

1909
 *Oct. 11.
 *Oct. 20.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Municipal corporation—Assessment and taxes—Exemption—Charter of Edmonton—Construction of statute—“License fee”—N.W.T. Ord., 192 of 1900— N.W.T. Ord., 1904, c. 19—Con. Ord. N.W.T., c. 89.

The provision of the charter of the Town of Edmonton (N.W.T. Ord., 1904, ch. 19), title xxxii., sec. 3, sub-sec. 4, exempting any person assessed in respect of any business from the payment of “a license fee in respect of the same business” does not apply to fees exigible upon licenses issued by the provincial government under the “Liquor License Ordinance,” Con. Ord., N.W. Ter., ch. 89.

Judgment appealed from (2 Alta. L.R. 38) affirmed.

APPEAL from the judgment of the Supreme Court of Alberta(1), reversing the judgment of Stuart J., at the trial, and dismissing the plaintiff’s action with costs.

The circumstances of the case are stated in the judgments now reported.

Wallace Nesbitt K.C., for the appellant.

Chrysler K.C. and C. A. Grant, for the respondent.

THE CHIEF JUSTICE.—I would dismiss this appeal with costs.

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

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Davies J.

GIROUARD J. agreed with Anglin J.

DAVIES J.—After the argument in this case and a careful study of the “Liquor License Ordinance,” ch. 89 of the Consolidated Ordinances of the North-West Territories and “The Edmonton Charter,” I became satisfied that the judgment appealed from was right. I agree with the reasons of the court of appeal for that judgment, delivered by Mr. Justice Beck, namely, that on the true construction of sub-section 4 of section 3, Title XXXII. of that ordinance declaring any person assessed in respect of any business “not to be liable to pay a license fee in respect of the same business” the words “license fee” apply clearly to a license issued by the municipal corporation and have no reference to the license issued by the provincial authorities under the “Liquor License Ordinance.” The City of Edmonton could not grant nor withhold the license in question in this case, and the language of the section must be held as applicable only to fees on licenses which were within their power to grant.

EDINGTON J.—The “Liquor License Ordinance” passed in 1898 having provided that hotelkeepers should be licensed by the government, and that they should each pay an annual fee for the license and that incorporated cities or towns which provided by by-law certain specified means for enforcing the law were to receive an additional fee, the respondent’s council passed, in 1900, the necessary by-law and became thereby entitled to receive this additional fee.

The appellant seeks to recover fees which he paid thereunder and rests his claim thereto on the ground that he paid, as required by the city’s charter, a busi-

ness tax which is not payable by those who are licensed by the city to carry on their business.

It is to be observed that it was not the city that granted or issued the licenses in question.

Again having regard to the scope of each act, I see no incompatibility between the provisions in the "Liquor License Ordinance" and this provision in the city charter, especially when the latter in express terms re-affirms the city by-laws of which the above mentioned was one.

And even if the amendment of the by-law, in February, 1908, can be said to have been an act of the city which operated in any way as a licensing by virtue of the charter, that act must be taken to have had priority over the act of the assessor in making, in April, the assessment he made. The license fee was the first paid. If both could not stand, it should be the later imposition and levy that must fall, and this latter is not attacked. I, however, think both quite legal for the reasons assigned above and in the courts below.

The appeal should be dismissed with costs.

ANGLIN J.—In my opinion this appeal cannot succeed.

Sub-section 2 of section 46 of the "Liquor License Ordinance" of the North-West Territories is in the following terms:

Incorporated cities or towns (that have appointed an inspector or inspectors under the provisions of section 11 of this ordinance) may by by-law require each licensee to pay towards their municipal revenue such sums as they may determine not exceeding the amount of territorial duty payable on such license. * * *

The present action is brought to recover two sums of \$400 each paid under protest by the plaintiff pur-

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suant to the requirements of a by-law of the defendant municipality passed under this statutory provision. The appellant claims that the provisions of the special Act or charter of the City of Edmonton are inconsistent with the exercise of this power by that municipality in the case of this plaintiff who has been subjected by the city to a business tax or assessment in respect to his hotel business. In support of this position he principally relies upon a provision of sub-section 4 of section 3 of Title XXXII. of the "Charter of Edmonton" that

no person who is assessed in respect of any business * * * shall be liable to pay a license fee in respect of the same business.

The City Charter further provides, Title I., section 7 :

All ordinances inconsistent with this ordinance are hereby repealed in so far as they relate to the City of Edmonton; and where any matter or thing is provided for by this ordinance the provisions of any other ordinance in relation thereto shall be deemed to be superseded so far as they relate to the said city.

The appellant further argues that in respect to the plaintiff, because of his business assessment, the municipality of Edmonton is deprived of the power conferred on towns and cities by sub-section 2 of section 46 of the "Liquor License Ordinance."

The sum of money which a licensee may, under the "Liquor License Ordinance," be required to contribute to the municipal revenue is not a license fee in the sense in which those words are used in sub-section 4 of section 3, Title XXXII. of the "Charter of Edmonton." The license fee under the "Liquor License Ordinance" is paid to the provincial government. The money paid to the municipality is not paid for a license to sell liquor.

Then again by section 2, of title XXII. of its

charter, the municipal council of Edmonton is empowered to pass by-laws

for the issue (*sic.*) of licenses and payment of license fees in respect of any business.

This provision must be held to refer to licenses which the municipality has power to issue and to fees in respect of such licenses. That it does not extend to liquor licenses, the issue of which is, by the general law of the province, reserved to the provincial executive, is made clear by the proviso appended to section 2 in these words,

provided that no such by-law shall be contrary to the general law of the Territories.

Indeed I think "the license fee" mentioned in subsection 4 of section 3 of Title XXXII. of the charter must be a "license fee" which might, but for that section, be imposable under section 2 of Title XXII. by the municipality.

I find nothing in the charter of the City of Edmonton inconsistent with the exercise in this case of the power conferred generally on cities and towns by subsection 2 of section 46 of the liquor license law.

The appeal in my opinion fails and should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *J. E. Wallbridge.*

Solicitor for the respondent: *John C. F. Bown.*

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