EDWARD GRIERSON (PLAINTIFF). APPELLANT;

AND

THE CITY OF EDMONTON (DEFENDANT). RESPONDENT.

1917
*Feb. 19.
*May 2.

ON APPEAL FROM THE DISTRICT COURT, DISTRICT OF EDMONTON, IN ALBERTA.

Appeal—Jurisdiction—Assessment and taxation—"Grossly" excessive —Statutory tribunals—"Supreme Court Act," R.S.C. 1906, s. 41—(Alta.) 3 Geo. V. c. 23.

Upon evidence that an assessment is "grossly" excessive it should be varied by the Supreme Court of Canada, to which an appeal lies from the judgment of the final tribunal created under the charter of the city respondent.

Pearce v. *Calgary*, 54 Can. S.C.R. 1; 9 W.W.R. 668, followed.

Judgment of the District Court of the District of Edmonton reversed.

APPEAL from the decision of Taylor J., of the District Court of the District of Edmonton, in the Province of Alberta, maintaining, with a slight reduction in valuation, the assessment, for taxation purposes, of land belonging to the appellant.

The material facts of the case are fully stated in the judgments now reported.

G. F. Henderson K.C. for the appellant.

Eug. Lafleur K.C. for the respondent.

THE CHIEF JUSTICE.—I adhere to the opinion expressed in *Pearce* v. *Calgary* (1), with respect to appeals in assessment cases.

Speaking generally, the intrinsic value of a piece of property must necessarily be the price which it will

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

(1) 54 Can. S.C.R. 1; 9 W.W.R., 668.

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command in the open market and the local judge sitting in appeal with his knowledge and experience in ascertaining the price of real estate within his jurisdiction would, under normal conditions, be in a better position to judge of the value of such property than I can assume to be. But when, as in this case, the property has, by reason of exceptional conditions of a temporary nature, no marketable value and the judge has, misconstruing the statute, proceeded on a wrong basis in fixing the value for assessment purposes, then it is for us to endeavour, applying the statute to the evidence, to ascertain the fair actual value for assessment purposes as distinguished from the intrinsic value. It is important to bear in mind that the statute provides that, in estimating its value, regard may be had to the situation of the land, the purposes for which it is used or could or would be used if sold in the next succeeding twelve months. So that it is not the absolute value of the land that is to be ascertained, and the assessment being only for the current year, the limitation of the statute is a very proper one. The question, therefore, is, having regard to their location, present productive qualities and the uses to which they may be put within the next twelve months, what is the fair actual value for assessment purposes of the two parcels of land in question in the condition in which they were?

If the true value is, having regard to the considerations I have just mentioned, that given by the appellant's witnesses, then the difference between that value and the assessed value is certainly gross, if that word has any meaning. The county judge, in my opinion, proceeded upon a false basis when, in the absence of proof of any intention to subdivide, he assessed the value on the assumption that, if subdivided, the

property would be saleable within the next twelve months at the figure he fixes. The judge also erred in applying the principle of equalisation having regard to the Swift and Burns properties, both of which are exceptional by reason of their situation and the uses to which their owners were in a position to put them. My attention was not drawn to anything in the statute which justifies the refusal to accept evidence of values on the basis of farm lands, that being the only use to which, at the present time, the appellant's properties could reasonably be put.

I can find nothing in the evidence that justifies the assessment of the lands in question at a higher figure than that given by the appellant's witnesses. I am, therefore, of the opinion that the land comprised in Roll No. 2081 should be assessed at $475 an acre, $75,525, and that comprised in Roll No. 1503 at $625 per acre, $95,317.50. There is no evidence of the general selling price of property in the appellant's neighbourhood at the time the assessment was made and there is no evidence that, if subdivided, they would realise more in the then condition of the real estate market or within the next twelve months than the appellant's witnesses would allow.

I would allow the appeal with costs.

DAVIES J.—I think the learned judge erred in adopting as the sole standard by which he should determine the amount for which the appellant's lands should be assessed, the amount for which other lands in the city, whether in the immediate vicinity of those in question or not, were assessed at. The value at which the lands in the *immediate vicinity* of those in question had been assessed was, no doubt, under the statute an important factor to be considered when

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determining the assessment value in question. But that does not apply in cases where the lands in question have been grossly overvalued by the assessors. The object and purpose of introducing this factor of equalisation in the assessments as a guide was as far as possible to obtain uniformity in the valuation. But that equalisation rule cannot be resorted to as the proper test or standard where there has been in the assessment a gross overvaluation in fact of particular lands beyond their "fair actual value."

Section 321 of the charter of the city of Edmonton is as follows:—

> Land shall be assessed at its fair actual value. In estimating its value regard shall be had to its situation and the purpose for which it is used or if sold by the present owner it could and would probably be used in the next succeeding twelve months. In case the value at which any specified land has been assessed appears to be more or less than its true value the amount of the assessment shall nevertheless not be varied on appeal, unless the difference be gross, if the value at which it is assessed bears a fair and just proportion to the value at which lands in the immediate vicinity of the land in question are assessed.

The question then before us is reduced to the simple one whether there has been such a gross overvaluation, looking to the situation of the land and the purpose for which it is used or, if sold by the present "owner, it could and would probably be used in the next succeeding twelve months."

After careful consideration of the evidence, I cannot, acting on the rules the statute lays down for determining the fair actual value, resist the conclusion that the land has not been assessed at its fair actual value, but that it has been grossly overvalued.

The question difficult of solution on our part is, assuming

a gross overvaluation in the assessment value,

what is the

fair actual value

of the lands? We have to be guided by the opinions of the witnesses, of course. Applying the statutory rules as above stated, these opinions, as might be expected, greatly differ. Had we the power to refer the case back to the judge who heard the appeal from the assessors in order that he might determine on proper principles the valuation at which the lands should be assessed, I would gladly do so. Not having that power, I have carefully considered the different valuations made by the witnesses called on both sides and have reached the conclusion that the fair actual acreage valuation of the learned judge should be reduced one-half, that is, the lands south of the Grand Trunk Pacific Railway to $1,000 per acre, and those north of the track to $575 per acre. Costs must follow the result.

IDINGTON J.—I think the respective assessments appealed against of the lands in question are, even as reduced by the local courts, still grossly in excess of the actual values thereof, and should be reduced as follows:

The assessment of the land comprised in Roll No. 2081 should be reduced to $475 an acre and fixed at $75,525, and the assessment of the land comprised in Roll No. 1503 should be reduced to $625 per acre and fixed at $95,317.50.

I retain the views I expressed in the somewhat analogous case of *Pearce* v. *Calgary* (1).

The appeal should be allowed accordingly with costs.

DUFF J.—The learned judge seems to have proceeded upon an erroneous principle. His reading of

(1) 54 Can. S.C.R. 1; 9 W.W.R. 668.

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the statute apparently led him to the conclusion that in applying the Act the governing consideration is supplied by the ratio generally prevailing (as regards the assessment roll for the particular year) between the assessed value and the actual value of assessed properties in Edmonton. This, I think, is a misconception due seemingly to the neglect of the condition upon which the comparison of ratios is to be considered, namely: that the departure in the assessed value from the actual value in the case arising for decision shall not, in the language of the statute, be "gross." The evidence conclusively shews that this condition is not satisfied in the present case where the difference, in my view, is equivalent to considerably more than 100% of the actual value of the property assessed.

The cardinal error in the valuation appealed from arises from a failure to observe the fundamental principle that where prospects of future sales or future profitable exploitations are considered in estimating value it is the present value of such prospects only that are to be taken into account. (See judgment of the Judicial Committee in *Fraser* v. *Fraserville* (1)). I should reduce the assessment to an amount arrived at by valuing 152.5 acres at $625 an acre and 159 acres at $475 an acre.

ANGLIN J.—The dominant provision for the assessment of land made by the charter of the city of Edmonton is that

> land shall be assessed at its fair actual value.

In cases, however, where the difference between the assessed value and the fair actual value is not "gross," the assessment is not to be varied on appeal if it bears

(1) [1917] A.C. 187; 34 D.L.R. 211.

a fair and just proportion to the value at which lands in the vicinity of the land in question are assessed.

The charter further provides in regard to the assessment of land that

> in estimating its value regard *may* be had to its situation and the purpose for which it is used or if sold by the present owner it could and would probably be used in the next succeeding twelve months.

The word *may* was substituted by amendment for the word *shall*, which appeared in the original section. I do not regard this change as entitling the assessor to take into account any prospective use which might be made of the land after twelve months had expired. He was formerly obliged to take into account its prospective use during the next succeeding twelve months. He is now not obliged but permitted to do so. The fair, if not the necessary, implication is that he may not take into account possibilities beyond the period so limited.

The judgment of the learned district judge makes it reasonably clear that in dealing with the assessment of the appellant's lands he did not take into consideration their fair actual value based on their situation, their present use and any prospective use to which they might be put within the next succeeding twelve months, or whether the difference between the fair actual value and the assessed value was gross or slight. Assigning as his reasons that

> the evidence given here is that the value of this land is almost the same as the lots surrounding it after making provision for subdivision

and

> there has also been no evidence to shew that this land is assessed higher in proportion to its situation than any other part of the city,

the learned judge dismissed the owner's appeal, subject to making a slight reduction as to a portion of the lands in question.

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On the evidence in the record it is abundantly clear that there was no likelihood whatever—indeed it may be said that there was no possibility—of the land here in question being used for anything else than farm or market garden purposes during the twelve months succeeding the assessment. Yet the assessment was obviously based upon the prospective value of the land for purposes of subdivision into building lots, and all the evidence offered in support of it was based on the assumption that it was properly so treated. The only evidence in the record as to the value of the property viewed as farm lands or as available for market garden purposes was that given on behalf of the appellant. In my opinion the assessment was grossly excessive and should be reduced to the maximum figures deposed to by the appellant's witnesses—$500 an acre for the land north of the right-of-way and $700 an acre for the land south of the right-of-way. These are the prices given by the witness Kenwood, who appears to have viewed the matter sensibly and equitably.

The appellant is entitled to his costs of the appeal.

Appeal allowed with costs.

Solicitors for the appellant: *Hyndman, Milner & Matheson.*

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