HOUGHTON LAND CORPORATION LIMITED (PLAINTIFF) ..... } APPELLANT;

AND

THE RURAL MUNICIPALITY OF RITCHOT AND JOSEPH JOYAL (DEFENDANTS) ..... } RESPONDENTS.

1927

*May 5, 6.
*June 17.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Assessment and taxation—Sale of land for taxes—Action to set aside sale —Land admittedly liable for portion of the taxes—Assessment Act, R.S.M. 1913, c. 134, s. 199, as amended (as now found in Consolidated Amendments, 1924, c. 134, s. 198)—Alteration of name on collector's roll invoked as irregularity—Onus of proof as to circumstances of alteration.

In an action to set aside a tax sale on the ground that certain amounts (claimed under the Man. *Seed Grain Act* for advances of seed grain, and under s. 473 of the Man. *Municipal Act* for boring a well) were wrongfully added on the rolls to the taxes properly payable, it was held (affirming, in the result, judgment of the Court of Appeal for Manitoba, 35 Man. R. 551) that the action was rightly dismissed, in view of s. 199 of the *Assessment Act*, R.S.M. 1913, c. 134, as amended (as now found in s. 198 of c. 134 of the Consolidated Amendments, 1924), over a year having elapsed since the sale and the treasurer's return having been made to the district registrar.

If the land was liable for some portion of the taxes for which it was sold, the ground, left open for setting aside a tax sale under said s. 199, as amended, "that the land was not liable for the taxes, or any portion thereof, for which the same was sold" is inapplicable.

History of the legislation reviewed; *Can. Nor. Ry. v. Springfield*, 30 Man. R. 82, referred to.

Where on the collector's roll it appears that a name has been substituted for that of another, as owner of land, the onus of showing that the change was improperly made rests upon the person invoking it as an irregularity.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

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APPEAL (1) from the judgment of the Court of Appeal for Manitoba (2) affirming the judgment of Mathers C.J. K.B. (3) dismissing the appellant's action to set aside a tax sale of land by the defendant municipality to the defendant Joyal. The material facts of the case are sufficiently stated in the judgment now reported. The appeal was dismissed with costs.

E. K. Williams K.C. and *E. F. Newcombe* for the appellant.

D. H. Laird K.C. for the respondent municipality.

C. H. Locke K.C. for the respondent Joyal.

The judgment of the court was delivered by

RINFRET J.—Houghton Land Corporation Limited brought this action to annul the sale of a parcel of land by the Rural Municipality of Ritchot to Joseph Joyal. The plaintiff sought to set aside the sale not only as against the municipality but also as against Joyal.

The land was sold for taxes entered on the collector's rolls of the municipality for the years 1920 and 1921. The Houghton company alleged that certain amounts were wrongfully added on the rolls "to the taxes properly payable" upon the land for the year 1920 and that the effect was to invalidate the sale.

The amounts to which objection was taken came to be due as follows:—

In 1920, one Edward G. McGee was in possession of the land under an agreement for sale from the company. Some time during the year, the municipality, without the knowledge or consent of the company, advanced to McGee seed grain for the farm to the value of $389.81 and bored a well at a cost of $140.70. The municipality took McGee's note for the seed grain account. Under the *Seed Grain Act* (R.S.M. 1913, c. 178, s. 23),

> The amount of * * * such promissory note * * * may be entered in the collector's roll of the municipality against any land therein owned by the maker of such note, and thereafter the amount of such note and interest thereon shall be held to be taxes due and in arrear against such

(1) For report of judgment dismissing a motion to quash the appeal for want of jurisdiction, see [1927] S.C.R. 17.

(2) 35 Man. R. 551; [1926] 2 W.W.R. 51.

(3) 35 Man. R. 331; [1925] 3 W.W.R. 695.

land as if duly levied and in arrear under the provisions of "The Assessment Act."

Likewise, under s. 473 of the *Municipal Act*,

Where a municipality * * * sinks a private well * * * upon lands * * * at the request of the owners of such lands, the amount of the total cost of doing any such work may be collected by the Municipality from the respective owners of the land upon which the said work has been performed, in the same manner and to the same extent as ordinary taxes, and all such amounts, if not paid on demand, shall be entered as extra taxes against the lands of such owners respectively in the then current Collector's Roll of the Municipality and be collectable as if levied under "The Assessment Act."

The point taken by the appellant is that McGee was not the "owner" within the meaning of this legislation and that these advances, made at his sole request, were not therefore properly chargeable against the land.

The decision of that point involved the interpretation of the agreement between the Houghton Land Corporation and McGee and the construction of the relevant sections of the *Seed Grain Act* and the *Municipal Act*. Following its own previous judgment in *Leistikow* v. *Municipality of Ritchot* (1), the Court of Appeal of Manitoba, Perdue C.J. dissenting, confirmed Mathers C.J., who decided against the company's contention and dismissed the action. Dennistoun J.A., however, with whom Fullerton J.A. concurred, also based his judgment upon s. 199 of the *Assessment Act* (R.S.M. 1913, c. 134), which he held applicable in the circumstances.

In our view, this section is sufficient to dispose of the action, without the necessity of construing the other Acts and the agreement.

The sale took place on the 27th day of October, 1922. The action was brought only on the 3rd January, 1924,—or more than a year after.

Under the Manitoba statute, the municipality does not issue a tax sale deed, but a certificate of the sale is delivered to the purchaser; and, if the land is not redeemed within one year thereafter, the treasurer of the municipality forwards to the district registrar for the land titles district in which the land lies a return "showing all lands which were sold * * * and which have not been redeemed, the persons to whom sold, the amounts at which the lands were sold," etc. The purchaser then has the right to apply

(1) (1923) 33 Man. R. 302.

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to the registrar for title to the land. A notice must be given to all persons interested, who have a further opportunity to redeem; and, if redemption is not made, or the proceedings are not stayed, a certificate of title under *The Real Property Act*, clear of all encumbrances, issues to the purchaser.

In this case, the treasurer made his return in due course to the district registrar and, in November, 1923, Joyal launched his application for title, when certificate of lis pendens was issued and filed by the present plaintiff.

Section 199 of R.S.M. 1913, c. 134, as now found in the Consolidated Amendments of 1924, c. 134, s. 198, is as follows:—

(1) Upon the expiration of one year from the day of sale, and thereafter unless and until the land is redeemed, the tax purchaser or his assignee shall, in all suits or proceedings wherein such tax sale is questioned, be *prima facie* deemed to be owner of the land.

(2) Upon the expiration of said period of one year the treasurer's return to the district registrar hereinafter provided for shall in any proceedings in any court in this province, and for the purpose of proving title under *The Real Property Act*, be, except as hereinafter provided, conclusive evidence of the validity of the assessment of the land, the levy of the rate, the sale of the land for taxes and all other proceedings leading up to such sale and that the land was not redeemed at the end of said period of one year; and, notwithstanding any defect in such assessment, levy, sale or other proceedings, no such tax sale shall be annulled or set aside except upon the following grounds and no other; that the sale was not conducted in a fair and open manner, or that the taxes for the year or years for which the land was sold had been paid or that the land was not liable for the taxes, or any portion thereof, for which the same was sold.

The words: "or that the land was not liable for the taxes, or any portion thereof, for which the same was sold" are not as clear as could be desired. They are possibly susceptible of being construed as meaning: "If any of the taxes for which the land was sold were wrongfully charged, that is a ground for setting aside the sale."

We think, however, those words mean: "The sale cannot be set aside, if the land was liable for some portion of the taxes for which it was sold." Such was the construction put upon them by Dennistoun J.A. and Fullerton J.A., with whom we agree.

The judgment of the Court of Appeal of Manitoba in *Canadian Northern Ry.* v. *Rural Municipality of Springfield* (1) is illuminative on this point.

(1) (1919) 30 Man. R. 82.

In that case, land had been sold for taxes for the years 1910 and 1911. It was contended that the taxes had been properly imposed for 1910, but improperly imposed for 1911, and the court so found. Cameron J.A. delivered the judgment and gave as follows, the history of the legislation:—

In the Revised Statutes of 1892, sec. 191, ch. 101, the words setting forth the grounds on which, and no other, a tax sale could be set aside were these:

"That the sale has not been conducted in a fair, open and proper manner; or that there were no taxes due and in arrears upon such land at the time of said sale for which the same could be sold."

The issue of tax-sale deeds by municipalities was abolished and a new method of making title to land sold at tax sales by application to the district registrar was instituted in 1894 by sec. 5, ch. 21, 57 Vict. The district registrar was authorized and bound to proceed in the manner therein prescribed, and issue a certificate of title unless it was shown to his satisfaction that the land was not liable for "the taxes or any portion of the taxes for which the same was sold." This last-mentioned section was repealed by sec. 1 of ch. 21, 60 Vict. (1897) and a new set of sections substituted. By subsec. (9) of said sec. 1, the district registrar was bound to issue a certificate unless it was shown to him that the land was not liable for "any portion of the taxes for which the same was sold." This latest-mentioned section was in its turn repealed by sec. 12, ch. 35, 63-64 Vict. (1900), and another series of subsections substituted, and in subsec. (16) there are set out the only grounds upon which a tax sale can be annulled or set aside, in these words:

"That the sale was not conducted in a fair and open manner, or that the taxes for the year or years for which the land was sold had been paid or that the land was not liable for taxation for the year or years for which it was sold."

These words were carried into the 1902 revision, ch. 117, sec. 202, and appear in the revision of 1913, sec. 199, ch. 134.

The learned judge then goes on to say:—

It appears, therefore, that the words of sec. 199 on which the solution of the question before us depends have been on the statute book since 1900 only. Decisions of our Courts on the validity of tax-sale proceedings prior to that time have, therefore, little application. Apparently if the legislation, above referred to, enacted in 1894 or in 1897, had remained in force, there could have been no question as to the validity of the sale before us. But the wording of sec. 199 is different, and no doubt designedly so, and it is now open to an owner to impeach a tax sale on the ground that the land was not liable to taxation during the year or years for which it was sold. The land in this case was sold for taxes for the years 1910 and 1911, and it was not liable to taxation for those years, but only for one of them.

The holding of the Court was that a tax sale is invalid "for every purpose unless the property was at the time liable for all the taxes for which it was sold."

This judgment was rendered on the 1st December, 1919

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At the session immediately following the judgment, the Legislature of Manitoba amended s. 199 of c. 134 of the Revised Statutes of 1913. (See Manitoba Statute, 10 Geo. V, c. 84, s. 20). It struck out the words: "or that the land was not liable to taxation for the year or years for which it was sold," on account of which the Court of Appeal had declared the sale invalid in the Springfield case. For these words the Legislature substituted the wording, as we have it now in the section applicable to the present case: "or that the land was not liable for the taxes, or any portion thereof, for which the same was sold."

It is, we think, of the utmost significance that these latter words are precisely those of the legislation of 1894, as to which in *Canadian Northern Ry.* v. *Springfield* (1), the Court of Appeal had stated that, had the law been so expressed, "there could have been no question as to the validity of the sale."

We thus have the Legislature of Manitoba, for the purpose of putting beyond question the validity of sales made for taxes by municipalities, adopting the very words which are now before us in s. 199, as it stood at the material dates of this case, apparently intending them to bear the construction put upon them by the highest court of the province. In our opinion, therefore, the interpretation of the section by Dennistoun and Fullerton JJ.A. was fully justified.

When the present action was brought, more than a year had elapsed since the date of the sale, and the treasurer's return had been forwarded to the district registrar. The Houghton company did not charge "any irregularities of machinery." It did not attack the proceedings of the sale, far less did it invoke any "substantial or fundamental defects" precluding the application of the section as was the case in *Standard Trusts Co.* v. *Municipality of Hiram* (2). It was urged later, although not made a ground of complaint in the statement of claim, that the collector's roll was altered and the name of McGee substituted as owner for that of the appellant. That is based entirely on conjectures. In the absence of any evidence that the change was improperly made, the contrary must

(1) (1919) 30 Man. R. 82. (2) [1927] S.C.R. 50 at p. 56.

be presumed. If the appellant wished to invoke this as an irregularity, it was upon it to show the circumstances. The former secretary-treasurer, Gauthier, who prepared the roll and made the change, was a witness in the case. No question whatever was put to him concerning this entry.

The only grievance against the sale is that the seed grain and the well accounts should not have been added on the collector's roll. None of the grounds set forth in section 199 were invoked here. There being no reason to preclude the application of the section, "no other" ground could be entertained by the courts of Manitoba for the purpose of annulling the sale, after the expiration of one year and after the treasurer had made his return to the district registrar. It is admitted that the land was liable for a large portion of the taxes for which it was sold. This under the statute is sufficient. With such a provision in the law, the decided cases to the effect that the inclusion in a tax sale proceeding of any unlawful amount renders the whole sale void are clearly inapplicable.

We must deal with this case purely and simply as an action to set aside the tax sale, irrespectively of the right of redemption or of any other recourse by the Houghton Land Corporation against the municipality, as to which we express no opinion. We think, in view of s. 199, the sale to Joyal must stand.

The appeal should be dismissed with costs. The respondent Joyal should have his costs against the appellant.

Appeal dismissed with costs.

Solicitor for the appellant: *E. Browne-Wilkinson.*

Solicitors for the respondent municipality: *Munson, Allan, Laird, Davis, Haffner and Hobkirk.*

Solicitor for the respondent Joyal: *C. M. Boswell.*