

1924  
 \*Nov. 18.  
 \*Dec. 30.

LA COMPAGNIE DE JESUS (DEFEND- }  
 ANT) ..... } APPELLANT;

AND

LA CITE DE MONTREAL (PLAINTIFF) . . . RESPONDENT.

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

*Assessment and taxes—Municipal corporation—Exemption from taxes—  
 Granted to "successors or ayants cause"—Sale—Right of buyer.*

Section 4559 of the Town Corporations Act, R.S.Q. (1888) provided that "the council may, by a resolution, exempt from the payment of municipal taxes \* \* \* any person who carries on any industry, or trade, or enterprise \* \* \* ." In 1906, the town of Notre Dame des Neiges (annexed in 1910 to the city respondent) passed a resolution exempting one E. G. and his successors or "ayants cause" from payment of taxes for a period of fifteen years upon farms of a total area of 192 acres, inasmuch as E. G. undertook to subdivide the property into building lots and to build during the first year a certain number of houses. In 1908, E. G. sold his property to the North-mount Land Company to whom right to exemption was confirmed; and the latter sold in 1910 to the appellant part of the property, undivided. The taxes for 1911, \$1,000, were paid to the respondent; but the taxes for 1912 and 1913, \$3,675, were unpaid. Proceedings were taken by the respondent for the sale of the property owned by the appellant. The latter pleaded that, under the terms of the resolution, it was entitled to the benefit of the exemption granted to its predecessor in title, as its successor or "ayant cause." At the time of the action the property bought by the appellant was still vacant.

*Held* that the appellant, not being presumed owing to its character and aims to have purchased the tract of land for the purposes of engaging in speculative building, was not an *ayant-cause* of its vendor and therefore was not entitled to claim the exemption from taxes granted to the latter.

APPEAL from the decision of the Court of King's Bench, Appeal Side, province of Quebec, reversing the judgment of the Court of King's Bench sitting as the Court of Review and affirming the judgment of the trial judge, who had dismissed the opposition filed by the appellant.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgments now reported.

*Beaulieu K.C.* and *St. Jacques K.C.* for the appellant.

*Laurendeau K.C.* and *St. Pierre K.C.* for the respondent.

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

The judgment of the majority of the court (Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.) was delivered by

1924  
LA  
COMPAGNIE  
DE JÉSUS  
v.  
LA CITÉ DE  
MONTREAL.  
Duff J.

DUFF J.—The statutory authority, by virtue of which the appellants claim the right to a commutation of taxes, which is asserted in this litigation, is to be found in section 4559 of the Revised Statutes of Quebec, 1888, and is in these words:

4559. The council may, by a resolution, exempt from the payment of municipal taxes, for a period not exceeding 20 years, any person who carries on any industry, or trade, or enterprise whatsoever, as well as the land used for such industry, trade or enterprise; or may agree with such person for a fixed sum of money payable annually for any period not exceeding 20 years, in commutation of all municipal taxes.

Such exemption or agreement does not extend to work upon water-courses, boundary ditches, fences, clearances or front roads connected with taxable property so exempted or commuted.

Purporting to exercise the authority created by this enactment, the town of Notre-Dame des Neiges passed the following resolution on the 9th February, 1906:

Attendu que monsieur Edouard Gohier, *agent d'immeubles*, a acquis et entend acquérir dans la ville de Notre-Dame des Neiges, les terrains suivants, savoir:

La ferme Swail, portant le numéro vingt-cinq (25) formant environ cent vingt-deux arpents, la ferme Lacomb, portant le numéro vingt-sept (27), et formant environ vingt-huit arpents, le terrain Leslie, portant les numéros quarante (40) quarante A, quarante B, (40A-40B) formant quarante-deux arpents environ, *et qu'il entend exploiter ces terrains en lots à bâtir et ouvrir des rues, y bâtir des maisons et faire la concession de ces terrains.*

Attendu que cette exploitation serait de nature à augmenter considérablement la valeur de la propriété foncière imposable de la ville de Notre-Dame des Neiges et donnerait, par conséquent, des revenus considérables à la dite municipalité;

Attendu que ces terrains ne paient actuellement pour toutes taxes municipales que les sommes respectives de \$274.85;

Il est en conséquence résolu: sur proposition de monsieur l'échevin J. McKenna, seconde par monsieur l'échevin P. Sarrazin, que la demande de monsieur Edouard Gohier, telle qu'elle est faite, plus les amendements qui suivent, soit adoptée.

Proposé, en amendement à la motion de monsieur l'échevin J. McKenna, par monsieur Jos. Prévost, secondé par monsieur J. Lacombe, que le terme de 20 ans de la dite convention soit remplacé par celui de 15 ans à partir du 1er mai 1906.

Adopté à l'unanimité.

La corporation de la ville de Notre-Dame des Neiges, consent par ces présentes, de n'exiger que les sommes respectives de \$274.85, pour taxes municipales, pour une période de vingt années, tous les terrains suivants, savoir:

La ferme Swail, portant le numéro vingt-cinq (25), formant environ cent vingt-deux arpents, la ferme Lacombe, portant le numéro vingt-

1924  
 LA  
 COMPAGNIE  
 DE JÉSUS  
 v.  
 LA CITÉ DE  
 MONTRÉAL.  
 Duff J.

sept (27), et formant environ vingt-huit arpents, le terrain Leslie, portant les numéros quarante, quarante A et quarante B, (40-40A, 40B), formant environ quarante-deux arpents, tant et aussi longtemps que les dits terrains seront la propriété du dit Edouard Gohier, ses successeurs ou ayants-cause; néanmoins, au fur et à mesure que le dit Edouard Gohier, ses successeurs ou ayants-cause auront vendu ou concédé un ou des lots bâtis ou non bâtis sur ces dits terrains, telle convention ne s'appliquera pas aux dits terrains ainsi vendus, lesquels seront évalués au rôle d'évaluation de la dite corporation suivant la loi, et seront sujets à être taxés de la manière ordinaire.

Le nombre des propriétés construites par la compagnie ne devra pas être moins de quarante maisons, pour la première année, et seront taxables après six mois, vendues ou non. Le prix ne sera pas moins de \$2,000. Le solage devra être soit en béton ou en pierre. Si un des actionnaires bâtit pour lui-même, ce terrain sera taxable. Aucune partie de ce terrain ne devra être vendue pour cimetière.

La convention de taxes ci-dessus ne s'appliquera qu'à la partie non vendue et non concédée desdits terrains et demeurant et restant la propriété dudit Edouard Gohier, ses successeurs ou ayants-cause.

Cette convention de taxes ne s'étendra pas non plus pour tous lesdits terrains, aux travaux à faire aux cours d'eau, drainage ou canaux d'égouts, fossés de lignes, clôtures ou chemins de front dépendant des biens impossibles ainsi exemptés.

La présente convention de taxes, sous les réserves ci-dessus, commencera à compter du premier jour de mai, mil neuf cent six, et pour quinze années à venir de la dite date.

The properties described in this resolution having been sold by Gohier to the Northmount Land Company, the town adopted, on the 13th April, 1908, this further resolution:

Attendu que le conseil municipal de la corporation de la ville de Notre-Dame des Neiges, à une de ses sessions tenue au dit lieu de la Côte des Neiges, le neuf février mil neuf cent six, a passé une résolution relativement à une fixation de taxes pour la compagnie The Northmount Land Company, en, par cette dernière se conformant à certaines conditions et notamment construisant quarante maisons de deux mille piastres chacune.

Attendu que la compagnie The Northmount Land Company a déjà accompli beaucoup plus qu'elle n'était obligée de faire et entr'autes a construit vingt-trois maisons de trois à sept mille piastres chacune;

En conséquence de ce que ci-dessus, qu'il soit résolu que la corporation de la ville de Notre-Dame des Neiges en considération de ce que déjà fait par la compagnie The Northmount Land Company, reconnaît que The Northmount Land Company a amplement rempli ses obligations pour la somme d'argent dépensée, et soit à l'avenir dispensée de l'obligation de parfaire quarante maisons et ait le maintien complet de ses privilèges et exemptions.

On the 18th October, 1910, the Northmount Land Company sold part of the cadastral numbers 25 and 27, consisting of about fifty acres, to the appellants, and it is in relation to the taxes assessable in respect of this property that the dispute has arisen

In 1910, the town of Notre-Dame des Neiges was annexed to Montreal. The property in question appeared on the assessment roll in the name of the appellants, with a valuation of \$100,000 in the year 1911, and of \$175,000 in each of the years 1912 and 1913. The assessment (\$1,000) for the year 1911 was paid by the appellants; those for the years 1912 and 1913 (amounting in the aggregate to \$3,675) were not paid, and proceedings were accordingly taken for the sale of the property. The contention on behalf of the appellants is that, under the terms of the resolutions, they are entitled to the benefit of the commutation granted to their predecessor in title, Edouard Gohier, as his successor or *ayant-cause*.

It is unnecessary to consider whether the arrangement with Gohier was a commutation authorized by the enactment quoted above; although it may be observed that the decision of the Court of Review affirming the judgment of Lafontaine J. in *Corporation de Cartierville v. Compagnie des Boulevards* (1), would, if followed, exclude the appellants' claim. The interpretation of the agreement embodied in the first resolution upon which the appellants rest their claim is this; the conditions, they say, laid down by the resolution, having been performed, as is formally declared by the resolution of 1908, the right to the commutation of taxes agreed to became vested in the Northmount Land Company, the successors of Gohier, and this right, it is said, passed to the appellants as purchasers from the company. In reply to the argument based upon the clause of the resolution providing that the reduction of taxes is only to affect lands remaining in the hands of Gohier, his successors or *ayants-cause*, and consequently is not applicable to any portion of the lands sold or granted by Gohier or the Northmount Land Company, it is asserted that the effect of this clause is to exclude from the benefit of the agreement only such parts of the land as are granted as building lots, and that the clause does not contemplate such a transaction as that with the appellants, under which a considerable area was sold *en bloc*.

This argument seems to proceed upon an inadmissible view, both of the resolution and of the statute. The statute

1924  
LA  
COMPAGNIE  
DE JÉSUS  
v.  
LA CITÉ DE  
MONTREAL.  
Duff J.

(1) [1916] Q.R. 51 S.C. 170.

1924

LA  
COMPAGNIE  
DE JÉSUS  
v.  
LA CITÉ DE  
MONTREAL.

Duff J.  
—

sanctions agreements for exemption and for commutation of taxes with some person who "carries on" an "industry, trade or enterprise." Primarily, the privilege relates to taxation in respect of the "industry, trade or enterprise," and it is quite indisputable that the statute contemplates the continuation of the privilege only so long as the "industry, trade or enterprise," in respect of which it is granted, is carried on. The exemption or commutation may also extend to lands used for the "industry, trade or enterprise," but it is equally clear that the duration of this exemption is limited in the same way. The statute does not refer to successors, although it may be assumed, without expressing an opinion upon the point, that so long as the identity of the business which is the primary subject of the exemption or commutation is preserved, the benefit of the agreement with the municipality may pass to a successor or a transferee; but there is nothing in the language of the statute giving colour to the contention that lands affected by the privilege by reason of being used for the purposes of the business continue to enjoy it after they have been severed from the assets of the business and have passed into other hands than those of its owners.

The resolution, of course, must be read in light of the terms of the statutory authority upon which the municipality purported to act. Assuming that Gohier and the Northmount Land Company were carrying on an "industry, trade or enterprise" in the sense of the statute, and assuming, further, that this "industry, trade or enterprise" has not come to a termination, it is impossible to hold, on the evidence in the record, that the appellants have acquired and are prosecuting it. The Northmount Land Company apparently did not denude itself of the whole of the lands unsold when, in 1910, it made the transfer of the tract in question to the appellants. It was not disputed that the fifty acres acquired are still vacant, and it cannot be presumed that the appellants, having regard to their character and aims, purchased this tract of land for the purposes of engaging in speculative building, assuming them to have the juristic capacity to do so.

The appeal should be dismissed with costs.

IDINGTON J.—This is an appeal from the Court of King's Bench of Quebec on the appeal side, allowing an appeal from the Court of Review and confirming the judgment of the Superior Court by which the opposition made by appellant to the seizure of certain of its properties for non-payment of municipal taxes, was dismissed.

There has been written by Mr. Justice Tellier a dissenting judgment in the said Court of Review; and others by Mr. Justice Dorion and Mr. Justice Hall in said Court of King's Bench, each dealing at length with the questions raised, so fully and effectively, that, as I agree in the main therewith, I see no useful purpose to be served by repeating herein the reasons thereby assigned in support of the claims of respondent.

I doubt much the original validity of the commutation relied upon by appellant; but apart altogether from that, agreeing as I do with the said reasons demonstrating that the appellant is not entitled to relief thereby, I am content with expressing said doubt.

The factum of respondent calls our attention to the decision of this court in the case of *Ville Saint-Michel v. Shannon Realities, Limited* (1), upheld later on appeal to the Judicial Committee of the Privy Council.

Had that decision been arrived at a couple of years earlier by said courts, I imagine it would have saved much judicial labour in the course of what this cause has come through, for appellant paid one year's taxes and failed apparently to take any steps, as it should have done if any ground therefor, in way of challenging the assessments it now complains of.

I am of the opinion that this appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *St. Jacques, Fillion & Houle.*

Solicitors for the respondent: *Jarry, Damphousse, Butler & St.-Pierre.*

1924

LA  
COMPAGNIE  
DE JÉSUS  
v.  
LA CITÉ DE  
MONTRÉAL.

Idington J.

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(1) [1922] 64 Can. S.C.R. 420; [1924] A.C. 185.