Supreme Court of Canada
La Corporation Archiépiscopale Catholique Romaine de Saint Boniface v. Town of Transcona, (1917) 56 S.C.R. 56
Date: 1917-11-28

La Corporation Archiepis-Copale Catholique Romaine De Saint Boniface. Appellant;

and

The Town of Transcona. Respondent.

1917: October 17; 1917: November 28.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM A JUDGE OF THE COUNTY COURT OF WINNIPEG, PROVINCE OF MANITOBA.

Statute—Construction—Assessment—Rate—Value of property—"Assessment Act," R.S.M., [1913] c. 134, s. 29.

The Manitoba "Assessment Act," R.S.M. [1913] ch. 134, sec. 29, provides that "in cities, towns and villages all real and personal property may be assessed at less than actual value or in some uniform and equitable proportion of actual value, so that the rate of taxation shall fall equally upon the same."

Held, that this legislation does not authorize the assessment of property at more than its actual value.

APPEAL and CROSS-APPEAL from the decision of the senior judge of the county court of Winnipeg, reducing the assessment on appellant's property from $160,000 to $88,000.

The appellant claims that the assessment is greatly in excess of the real value, the respondent that the value should be that of normal times and that under the legislation quoted in the head-note the property could be assessed at more than its actual value provided that the whole assessment for the property was uniform and equitable.

Chrysler K.C. for the appellant. There are no reported cases upon the interpretation of this Act or of one containing the like provisions but the following

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decisions may be referred to: Pearce v. City of Calgary[1]; Grierson v. Edmonton[2]; City of Strathcona v. Edmonton and Strathcona Land Syn.[3]; Crawford v. Linn Co.[4].

Taxing Acts should be construed strictly, *O'Brien* v. *Cogswell*[5].

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[1] 9 West. W.R. 668.
[2] [1917] 2 W.W.R. 1138.
[3] 3 Alta. L.R. 259.
[4] 5 Pac. R. 738.
[5] 17 Can. S.C.R. 420.

Hull for the respondent. This legislation was first enacted in 1909 and the decisions of the county court judges under it have been uniformly in favour of our contention. When re-enacted in 1910 the legislature adopted this judicial interpretation. See *Greaves* v. *Tofield*[6]; *Jay* v. *Johnstone*[7].

Chrysler K.C. for the appellant.

Hull for the respondent.

THE CHIEF JUSTICE.—I concur with Mr. Justice Idington.

DAVIES J.—The main and substantial question arising on this appeal was as to the true construction of section 29 of "The Assessment Act" of Manitoba.

That section reads:—

> In cities, towns and villages all real and personal property may be assessed at less than actual value or in some uniform and equitable proportion of actual value, so that the rate of taxation shall fall equally upon the same. The expression "actual value" used in this section shall mean the fair market value of such property, regardless of a prospective increase or decrease, either probable, remote or near.

As I understood the argument of counsel for the respondent, it was that uniformity was the controlling principle embodied in this section and that it did not matter in applying that principle whether the assessment was above or below the actual value of the lands assessed.

I was impressed during the argument with the

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force of this contention but after giving the question much consideration have concluded that it cannot be upheld.

The general principle that in construing legislation imposing taxation clear language must be found supporting the taxation must be borne in mind.

Now in the section before us while express language is used permitting assessment at *less* than actual value, there is no such language permitting assessment at *more* than actual value.

It was contended that such permission should be inferred from the words

[6] 14 Ch. D. 563.
[7] [1893] 1 Q.B. 189.

> or in some uniform and equitable proportion of actual value.

These are vague and indefinite words and I do not think that from them alone a permission should be inferred to assess at more than the actual value of the land.

They are useful and probably necessary in cases where the permission to assess at less than the actual value is exercised as in such case preserving the general principle of uniformity and providing that the permission so to assess must be exercised not in a haphazard way but uniformly

> so that the rate of taxation shall fall equally upon the same,

which latter words I construe to mean upon all the lands and property assessed. If the policy of assessing "lands and personal property" at *less* than their actual value is adopted by the assessors it must be applied generally "to all real and personal property" and on some fixed principle, so that uniformity may be maintained and injustice prevented.

But, however that may be worked out under the statute, it seems to me reasonably clear that no intention to assess property beyond its actual value can be assumed or inferred.

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I am not insensible to the many and great difficulties which existing conditions of the absence of any actual value of the lands in many parts may give rise to in making an assessment. But if the two main principles which I suggest are followed these difficulties can be largely minimized if not entirely overcome. These principles are that the Act does not authorize assessments greater than the "actual value" of the property assessed which the section goes on to say means

> the fair market value of such property regardless of a prospective increase or decrease, either probable, remote or near,

and that when assessed at *less* than the actual value it must be done on a uniform principle applied to all the lands and property assessed.

I concur therefore in allowing the appeal with costs, and reducing the assessment to $40,000. There is some evidence at any rate justifying that figure as the actual value of the lands assessed and there does not appear to be any justifying a higher valuation.

IDINGTON J.—I find no valid reason in the argument set up to support the claim to assess appellant's property at a sum beyond its valuation.

Whether we consider "The Assessment Act" or "The Municipal Act" or both together, and read the words "value," "actual value," "market value," respectively used therein and according to their proper force and effect with in the recognized rules of interpretation and construction, there is to be found no warrant for resorting to the particularistic method of interpretation we are asked to adopt, and thereby render much of the language used and legislation it expresses, null and absurd.

I doubt if ever such methods of interpretation and construction should be tolerated, though we must

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admit courts of law have too frequently lent a willing ear thereto, and only for that reason do I think such an argument pardonable.

Counsel for respondent did not seem to deny that Mr. Chrysler's analysis and inferences from the evidence which placed the total value at $40,000, were fair.

The appeal should be allowed with costs and the assessment fixed at $40,000, the reduction of $48,000 being applied distributively in proportion to the relative sums fixed as to the assessment of each parcel involved, pursuant to the judgment of the district judge's decision.

DUFF J.—The appeal should be allowed with costs, and the assessment reduced to $40,000.

ANGLIN J.—The sole question on this appeal is whether under section 29 of the "Manitoba Assessment Act," (R.S.M., 1913, ch. 134), an assessment of land in excess of its value is permissible in cities, towns or villages.

By section 422 of the "Municipal Act" (R.S.M. 1913, ch. 133; amended 1916, ch. 72, s. 10) the maximum rate of taxation (exclusive of certain special rates) to be levied in cities, towns and villages is fixed at two cents on the dollar of assessed value. Sec. 423 of the same statute requires that the rates shall be calculated at so much in the dollar upon the

actual value of assessable property, except as otherwise provided in the "Assessment Act" for cities, towns and villages.

The only provision of the "Assessment Act" by which it is otherwise provided is section 29, which reads as follows:—

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> In cities, towns and villages all real and personal property may be assessed at less than actual value, or in some uniform and equitable proportion of actual value, so that the rate of taxation shall fall equally upon the same. The expression "actual value" used in this section shall mean the fair market value of such property, regardless of a prospective increase or decrease, either probable, remote or near.

The *primâ facie* meaning of the word "proportion" in this collocation is clearly "portion." That is the meaning which ninety-nine men out of a hundred would give to it. The only ground for suggesting that it bears another meaning is the presence in the section of the preceding phrase, "at less than actual value," and the connecting conjunction, "or." It is argued that to avoid redundancy the word "proportion" must be given the meaning of multiple, or fraction of a multiple. But tautology in statutes is something quite too common to warrant such a straining of the ordinary meaning of the word "proportion" in order to avoid it. I think the purpose of all the words following the word "value," where it first occurs in section 29, is to provide that in the event of the basis of the assessment of land being "less than actual value" the same fraction of value must prevail in all cases "so that the rate of taxation shall fall equally." The word "or" is not used disjunctively to separate the expression of two distinct ideas, but, as is quite ordinary, to indicate that the idea expressed in the phrase, "at less than actual value," is repeated in another form in the word "proportion," with the qualification of uniformity and equitability superadded, the purpose being indicated by the succeeding words,

> so that the rate of taxation shall fall equally upon the same.

It may of course be conceded that the section is not a model of draughtsmanship.

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The form of oath prescribed for the assessor affords a very strong indication that the legislature in fact used the word "proportion" in the sense of portion. Moreover, were it otherwise—if assessed values might be "boosted" indefinitely—the purpose of the restriction of the rate of taxation in cities, towns and villages to two cents on the assessed

value would be defeated. It would indeed be purely illusory. If in fact personalty has been assessed in Transcona "at its actual cash value," (s. 33), or on any lower basis, the "uniformity" provision of the statute is violated by the assessment of the appellant's land. The basis of assessment of realty must be the same as that of the assessment of personalty (s. 29).

It would require unmistakable language to authorize an assessment of any property at more than its value. Nothing in section 29 of the "Assessment Act" warrants attributing to the legislature an intention to do anything, so extraordinary, and the other statutory provisions referred to preclude such a view.

Mr. Chrysler admitted that there is evidence justifying an assessment of $40,000. Mr. Hull stated that he could not point to any evidence which would support a higher figure.

The appeal must be allowed with costs throughout and the assessment reduced to $40,000.

Appeal allowed with costs.

Solicitors for the appellant: Munson, Allan, Laird & Davis.

Solicitors for the respondent: Hull, Sparling & Sparling.