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*Oct. 14, 15.
*Oct. 27.

WILLIAM NISBET PONTON (PLAINTIFF) ..... APPELLANT;

AND

THE CITY OF WINNIPEG (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Municipal corporation—Powers—Land tax sales—Purchase by corporation—Vesting of title—Manitoba Real Property Act—Agreement to re-convey—Necessity of by-law.

After the City of Winnipeg had become purchaser of lands within the city, sold for arrears of overdue taxes, and had obtained a certificate of title therefor under the Real Property Act, a resolution of the city council was passed agreeing that the land should be re-conveyed to the former owner on payment of the taxes in arrears with interest and costs.

Held, that the corporation was not bound by the resolution as the re-conveyance of the lands could be made only under the authority of a by-law as provided by the city charter. *Waterous Engine Works Co.* v. *The Town of Palmerston* (21 Can. S.C.R. 556) and *District of North Vancouver* v. *Tracy* (34 Can. S.C.R. 132) followed.

Judgment appealed from (17 Man. R. 497) affirmed.

APPEAL from the judgment of the Court of Appeal for Manitoba(1), affirming the judgment of Mathers J., at the trial, by which the plaintiff's action was dismissed with costs.

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

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Maclennan and Duff JJ.

(1) 17 Man. R. 496.

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Armour K.C. and *R. S. Cassels* for the appellant.

Theodore A. Hunt for the respondent.

The judgment of the court was delivered by

MACLENNAN J.—This is an appeal by the plaintiff from a judgment of the Court of Appeal for Manitoba, affirming a judgment of the trial judge, who dismissed the action with costs.

The plaintiff had been the owner of 170 vacant lots of land situate within the defendant's municipality, except so much thereof as was taken by the Canadian Pacific Railway Co. for their roadway, and, on the 25th November, 1892, his title was duly registered under "The Real Property Act" of Manitoba.

The plaintiff had allowed the taxes imposed by the defendant in respect of these lands, to fall in arrear and remain unpaid for a number of years, the last payment made by him having been of those for the year 1893.

In the year 1897 the defendant caused the lands to be sold for the arrears of taxes, and as authorized by the law of the province, became the purchasers thereof.

The validity of this sale and purchase is not impeached or questioned in the pleadings, and was expressly admitted at the trial. But the defendant did not, by the mere sale, become the indefeasible owner of the land. To have that effect, it had to be followed by a certificate of title obtained from the district registrar of titles.

The defendant did not take the necessary steps to obtain a certificate of title until the 22nd October,

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1900, when the prescribed notice bearing that date was prepared and was served upon the plaintiff on the 3rd of November following. This notice intimated to the plaintiff that, as the law permitted, he might redeem the land within six months from the day of service, or at any time before the issue of a certificate of title to the applicant, by payment to the district registrar of the arrears of taxes, together with a bonus of twenty per cent., but that in the event of non-payment a certificate of title under "The Real Property Act" would be issued to the applicant.

The plaintiff did not, either within the six months named in the notice, or afterwards, pay the taxes in arrear, or any part thereof, although the defendant delayed in applying for a certificate of title until the 7th of April, 1902.

On the last mentioned day payment not having been made a certificate issued to the defendant, and no attempt had been made to impeach its regularity or validity.

It is true that the plaintiff says that he treated a demand for taxes for the year 1901, made by the defendant, as an abandonment of the notice of application which had been served on him in 1900. One can hardly listen seriously to this suggestion, coming from a barrister, who had been distinctly notified that until certificate obtained he might still redeem, when in fact the land was still his own, at his option, and, therefore, continued liable to taxation against him, at all events provisionally.

By section 387 of the defendant's charter taxes may be sued for as a debt. The taxes due prior to the sale were satisfied by the sale, unless the plaintiff chose to redeem within the time limited, and if the

sale became absolute by certificate of title, the subsequent taxes were merely provisional, on the defendant's own land and could not be recovered from the plaintiff. There is, therefore, in my opinion, no question of the validity of the certificate of title.

By section 71 of "The Real Property Act" it is declared as follows:

> Every certificate of title, hereafter or heretofore issued, shall as long as the same remains in force, and uncancelled, be conclusive evidence at law and in equity, as against His Majesty and all other persons whomsoever, that the person named in such certificate is entitled to the land described therein, for the estate or interest therein specified, subject to the right of any person to shew (certain things including fraud not material in this case).

The effect therefore of the certificate obtained by the defendant was to extinguish the plaintiff's title, both at law and in equity. From that time he had no right, legal or equitable, to the land any more than any other of His Majesty's subjects, and unless the defendant has dealt with the plaintiff, in relation to this land, in some way, which under the like circumstances, would give a right either legal or equitable to any other person, he cannot succeed in this appeal.

The defendant's title then being such as I have indicated, by virtue of the sale and the certificate, has anything happened, or has the defendant done anything, since obtaining it, to entitle the plaintiff to maintain this action?

One thing relied on is this: that after the date of the certificate, the 7th of April, 1902, the defendant's assessment commissioner served the plaintiff with a notice of assessment of the lands dated 3rd of May, 1902. I think that fact is of no importance. Section 325 of the city charter, section 10 of the "Assessment Act," requires that

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as early as practicable in each year the assessment commissioner shall report to the council the completion of the assessment rolls.

And the learned trial judge has pointed out that the plaintiff was the proper person in whose name to assess the lands up to the time that the certificate of title was issued to the defendant.

The assessment proceedings were commenced, and properly commenced, before the issue of the certificate, and were continued afterwards by the officer, without any special directions from the council.

Under these circumstances I think the assessment of the plaintiff for the year 1902 necessarily became and was quite nugatory, and could confer no right of redemption on the plaintiff.

The only serious question in the appeal in my opinion is the resolution of the finance committee of the 11th December, 1903, and its adoption by the defendant's council on the 14th of the same month, in the presence of the solicitor for the plaintiff.

The resolution is as follows:

> That all lots formerly owned by W. N. Ponton acquired by the city at tax sale be conveyed to the said Ponton on payment of all costs, interest and taxes to date.

And it was signed by the mayor and city clerk.

Nothing was done by the plaintiff or his solicitors in the way of accepting or availing himself of this resolution for more than four months, and on the 4th of April following a member of the council gave notice of a motion to rescind the resolution at its next meeting, and the council advertised the lands to be sold by public sale on the 20th of April.

This roused the plaintiff's solicitors to action and, on the 16th April, a clerk of the plaintiff's solicitors made a tender to the treasurer of the defendant of

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a sum of money accompanied by a letter offering to accept the resolution of the 14th December, but the tender was refused, and on the 18th of April the resolution of the 14th of December was rescinded.

The present action was commenced two days afterwards on the 20th of April.

It is upon this resolution of council, the offer to accept it, and the tender made to the treasurer, that the principal reliance of the plaintiff is placed, both in pleading and in argument.

It is said that the resolution and acceptance constitute a contract between the defendant and the plaintiff; and that the resolution is an offer which was accepted by the plaintiff by his solicitors' letter to the city treasurer, of the 16th of April, accompanied by the tender of the taxes, interest and costs.

The evidence of the assistant treasurer is that the sum tendered was considerably less than what was then due for taxes, interest and costs; but however that may be, I am clearly of opinion that the resolution, even though accepted, was not a contract or engagement which bound the defendant. The Statute of Frauds was pleaded, if that was necessary, and a contract in writing was necessary to bind the defendant.

Section 472 of the city charter is express that the powers of the council shall be exercised by by-law when not otherwise authorized or provided for, and I have looked in vain for any authorization or provision in the charter enabling it to sell land by mere resolution. A by-law authorizing a sale and a contract under seal were essential, in my opinion, to bind the defendant, and for want of these essentials, the alleged contract was inoperative.

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I refer to *Waterous Engine Works Co.* v. *Town of Palmerston*(1), and *District of North Vancouver* v. *Tracey*(2).

For these reasons, and the reasons of the learned judges of the Court of Appeal, I think the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Tupper, Galt, Tupper, Minty & McTavish.*

Solicitor for the respondent: *Theodore A. Hunt.*

(1) 21 Can. S.C.R. 556.

(2) 34 Can. S.C.R. 132.