PHILIAS VANIER (DEFENDANT).....APPELLANT; 1907

*May 14, 15.
*June 24.

AND

THE CITY OF MONTREAL (PLAINTIFF).....} RESPONDENT.

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

Municipal corporation—Montreal city charter—52 V. c. 79, s. 120 (Que.)—Construction of statute—"Current year"—Assessment and taxes—Limitation of action—Local improvements—Special tax.

By section 120 of the charter of the City of Montreal, 52 Vict. ch. 9 (Que.), the right to recover taxes is prescribed and extinguished by the lapse of "three years, in addition to the current year, to be counted from the time at which such tax, etc., became due." A special assessment for local improvements became due on the 14th of March, 1898, and action was brought to recover the same on the 4th of February, 1902.

Held, affirming the judgment appealed from (Q.R. 15 K.B. 479) the Chief Justice and Duff J. dissenting, that the words "current year" in the section in question, mean the year commencing on the date when the tax became due and that the time limited for prescription had not expired at the time of the institution of the action.

APPEAL from the judgment of the Court of King's Bench, appeal side, (1) affirming the judgment of the Superior Court, District of Montreal, which maintained the action with costs.

The circumstances of the case material to the question at issue upon the present appeal are stated in

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

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the head-note and discussed in the judgments now reported.

Beaudin K.C. and *Mignault K.C.* for the appellant.

Atwater K.C. and *J. A. Archambault K.C.* for the respondent.

THE CHIEF JUSTICE (dissenting).—By virtue of a special assessment made in connection with the widening of St. James street, and which became due and exigible on the 14th March, 1898, the appellant, as a proprietor interested in the work of improvement, was indebted to the city in the sum of $3,788.02, with interest, as claimed from the first of April, 1898. To recover these sums an action was brought by the city on the 4th February, 1902. To this action the defendant pleaded the prescription of three years and the current year under section 120 of the city charter then in force, 52 Vict. ch. 79.

By special answer the city alleged interruption of prescription, but this was not insisted upon and may now be considered as withdrawn.

The question to be determined on the pleadings is as to the meaning of the words "within three years in addition to the current year" to be found in section 120, which section reads thus:

> 120. The right to recover any tax, assessment or water-rate under this Act is prescribed and extinguished, unless the city within three years, *in addition* to the current year, to be counted from the time at which such tax, assessment or water-rate became due, has commenced an action for the recovery thereof, or initiated legal proceedings for the same purpose under the provisions of this Act; and the privilege securing such tax, assessment, or water-rate avails to the city, notwithstanding any lapse of time for the recovery of any

sum which may, by any judgment, be awarded to the city, for such tax, assessment or water-rate; provided that in case any special assessment is made payable by annual instalments, the prescription runs only from the expiry of each such instalment.

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The Superior Court, Taschereau J., held that the action was brought *en temps utile,* that is to say, within the time fixed by this section, and on appeal this judgment was confirmed.

We are, much to our regret, deprived of the advantage of reading the notes of the judges who sat in the case below, and who must have given the question much careful consideration. Although somewhat inartistically expressed, I am of opinion that the intention of the legislature, so far as I can gather it from the words used, was to give the city a right to recover the amount of the assessment by suit brought within three years from the time at which it became due in addition to the year then current. The three years are to be counted in addition to the current year as I read the statute. Which is the *current* year to which the three *calendar* years are to be added? Surely the year current when the tax became due and not the year then beginning. The word "year" used alone means a calendar year. *Gibson* v. *Barton*(1) page 329; and "current year" means the year running —passing—current—on its progress: *Annèe courante celle qui est en voie de s'accomplir* (Baudry-Lacantinerie, Vol. 3, No. 1729).

Can we hold that the Quebec legislature intended two terms which have such distinct meaning as current year and calendar year to be interpreted as convertible.

The tax became due and exigible on the 14th

(1) L.R. 10 Q.B. 329.

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March, 1898, when the special assessment roll, as finally revised, was deposited in the treasurer's office. Section 231 of the charter. And the year current when the tax was due was for purposes of taxation the year beginning May, 1897, and ending May, 1898.

In the *City of Montreal* v. *Cantin*(1), Taschereau C.J. says at page 228, construing the same statute:

> Here the statute decrees not merely that the assessment became due but also that *it may be recovered* immediately after the deposit of the roll creating the debt, and gives the remedy, the right to collect it immediately. And when it adds that the prescription runs from the date that the assessment *became due*, using the same expression, or when payable by instalments from the date of the expiry of each such instalment, that cannot but be construed as if it said, in so many words, that the prescription runs from the date of the deposit of the roll, or from the expiry of each instalment, if any.

This is a special tax payable once and for all, and prescription runs from the date of the deposit of the roll as it would run in the case of a tax payable by instalments from the expiry of each instalment.

On page 2 of their factum, the respondents say:

> Take the case of an annual assessment or tax imposed and levied, we will say, for the period of time comprised between the 1st of May of one year and the 1st of May of the next and becoming due, as the majority of taxes do, on the 1st day of November, the city would have the right to sue for three full years of such annual assessment as well as for the year current at the time of the institution of the action; thus, an annual tax or assessment which became due on the 1st of May, 1898, would not be prescribed until the 1st of November, 1902, that is, the city at any time between the 1st November, 1901, and the 1st November, 1902, could take action for the amount of the assessment which became due on the 1st November, 1898, as well as for any assessments in subsequent intermediate years, in addition to the current year.

I cannot quite understand what this paragraph means. If the tax became due on the 1st May, 1898,

(1) 35 Can. S.C.R. 223; (1906) A.C. 241.

prescription would begin to run from that date and an action could then be taken for the recovery of the amount of the taxes unless some provision in the city charter postponed payment until November. No such provision has been pointed out to us and I have not been able to find any. I repeat however that in my opinion the words "current year" in section 120, mean the year current at the time the tax became due. It is immaterial in so far as this case goes whether it is the current year for taxation purposes May, 1897, to May, 1898, or the fiscal year which is the same as the calendar year, 1st January, 1898, to 1st January, 1899. In one case the current year would end May 1st, 1898, and in the other January 1st, 1899; and in either alternative therefore the three years would have expired either May 1st, 1901, or January 1st, 1902. The action brought in February, 1902 was beyond the term. To hold otherwise is to refuse to give effect to the words "current year," and to say that when the legislature used the words "three years and the current year" it meant four calendar years, and the four years must be counted from the day the tax became due.

The natural and ordinary meaning of the word "current" used in this connection, is running—moving—flowing—passing—present in its course as the current month or year: (Century Dictionary).

The question we must answer is, what was the year running—passing—current in its progress when the tax became due in March, 1898, not what was the year then beginning. I repeat the answer is either the year fixed by the municipality for taxation purposes or the then calendar year.

It is unnecessary to say that the sense in which a word is used is to be gathered from the context, and

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one of the most elementary rules of construction requires that effect must be given if possible to every word, clause or sentence in a section. Undoubtedly three years means three calendar years, and if the legislature meant four calendar years why not have substituted the word four for the word three, but having used the words "current year" instead must we not say that it was obviously their intention by these words to refer to the year then running. If the legislature used the word "current" to qualify year, must it not presumably have been for some purpose to which we must give effect.

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

GIROUARD J.—The old charter of the City of Montreal in force at the time the proceedings in this cause took place, 52 Vict. ch. 79, sec. 120, provides that "the right to recover any tax, assessment, or water rate, under this Act, is prescribed and extinguished, unless the city, within three years, in addition to the current year, to be counted from the time at which such tax, assessment or water rate became due, has commenced an action," etc. The judges of both courts below have held that the "current year" means the year of the institution of the action. I am inclined to agree with them, especially in view of section 117, granting a privilege upon the land assessed. That section declares that

> such privilege does not extend beyond the amounts due for three years, that is to say, for the year when such claim is made, and for the three years next preceding that year.

I think that these two clauses of the charter must be read together; at least one helps the other; and if any

doubt exists in section 120, section 117 removes it. Practically, the city has four years to sue for taxes or assessments, and in this case the action was taken in due time.

The expression "current year" is not unique in the legislation of the Province of Quebec. It is to be found in arts. 2122, 2123 and 2124 of the Civil Code, and it is remarkable that the above interpretation had been adopted by the courts and commentators. *Macdonald* v. *Nolin*(1); Troplong, Priv. Hyp. n. 698, *ter;* 3 Aubry et Rau, 4th ed., par. 285, 698.

In my opinion the appeal should be dismissed with costs.

DAVIES J.—The determination of this appeal depends upon the proper construction of section 120 of 52 Vict. ch. 79 (1889) of the Province of Quebec. That statute was the city's charter at the time of the assessment and levying of the special tax now in dispute. The section reads:

> The right to recover any tax, assessment or water-rate under this Act is prescribed and extinguished unless the city within three years in addition to the current year *to be counted from the time at which said tax, assessment or water-rate became due* has commenced an action for the recovery thereof or initiated legal proceedings for the same purpose under the provisions of this Act; and the privilege securing such tax, assessment or water-rate avails to the city, notwithstanding any lapse of time, for the recovery of any sum which may, by any judgment, be awarded to the city, for such tax, assessment or water-rate; provided that in case any special assessment is made payable by annual instalments, the prescription runs only from the expiry of each instalment.

Much ingenuity was exercised in trying to give a limited meaning to the words of the section both with respect to the kind of taxes whether special as well as

(1) 14 L.C. Jur. 125.

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general to which it was applicable, as also to the time within which the city could recover the tax. I think the controlling words of the section are the words I have italicized above "to be counted from the time at which the said tax, assessment or water rate became due." Those words interpret, define and make certain what otherwise might be held indefinite and uncertain, namely, the meaning of the words "current year" excluding the idea that they could mean either the "city financial year" or the "calendar year" as alternately suggested, and covering ordinary as well as special taxes or assessments. They make, in my opinion, that quite plain which in their absence might be doubtful, namely, exactly what "current year" meant, and the exact time it covered in each case by arbitrarily fixing its commencement, namely, the day the tax became due. The reason, no doubt, for such a definition was the fact that the special and general taxes fell due on different days. I think the appeal should be dismissed with costs.

IDINGTON J.—I concur for the reasons stated by Mr. Justice Girouard.

MACLENNAN J.—I am of opinion that this appeal must be dismissed.

Whatever may have been the motive or reason for expressing the law limiting actions for the recovery of taxes and rates by the defendant corporation in the language which has been used, I think that language does not admit of the construction contended for by the appellant.

The section in question declares that the right to recover is extinguished, unless the city, within three

years, in addition to the current year, to be counted from the time at which the tax becomes due has commenced an action, etc. I think it is impossible to contend or hold that the current year here mentioned commences otherwise than as expressed, namely, at the time when the tax becomes due.

The appeal should be dismissed with costs.

DUFF J. (dissenting).—I dissent from the judgment of the majority of the court for the reasons stated by His Lordship the Chief Justice.

Appeal dismissed with costs.

Solicitors for the appellant: *Beaudin, Loranger & St. Germain.*

Solicitors for the respondent: *Ethier, Archambault, Lavallé, Damphousse & Butler.*