

*Privy Council Appeal No. 3 of 1921.*

The City of Montreal - - - - - *Appellants*

v.

The Attorney-General of Canada - - - - - *Respondent*

AND

The Attorney-General of Quebec - - - - - *Intervener*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL  
SIDE).

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 24TH OCTOBER, 1922.

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*Present at the Hearing :*

VISCOUNT CAVE.  
LORD PARMOOR.  
LORD PHILLIMORE.  
LORD JUSTICE CLERK.  
MR. JUSTICE DUFF.

[*Delivered by* LORD PARMOOR.]

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The Statutory Charter of the City of Montreal, as amended from time to time, down to, and including, the session of the provincial legislature of 1912, contains a series of provisions relating to "assessments and taxation," "valuation and assessment rolls," and "the sale of immovables for taxes and assessments." The sole question involved in the present appeal is whether Section 362A of the Charter, one of the sections included under the heading "assessments and taxation," is *ultra vires* the legislature of the Province of Quebec.

The section is as follows :—

" 362A. The exemptions enacted by Article 362 shall not apply either to persons occupying for commercial or industrial purposes buildings or lands belonging to His Majesty or to the Federal and Provincial Government or to the Board of Harbour Commissioners, who shall be taxed as if they were the actual owners of such immovables and shall be held to pay the annual and special assessments, the taxes and other municipal dues."

In the French version "the actual owners" are designated as "les véritables propriétaires," but it is not suggested that there is any distinction between the English and French versions. The language of Section 362A of the Charter is not clear. It has been construed in the Courts below to include properties, other than those exempted in Article 362. This construction was not questioned in the argument before their Lordships, and it is on this construction that the question of *ultra vires* directly arises.

The relevant facts may be shortly stated. By indenture of the 9th January, 1913, the Minister of Railways and Canals for Canada, as representative of the Crown, demised to Andrew Baile, a coal merchant, certain Crown lands in the City of Montreal for the term of five years, from the 1st October, 1912, at a rent of \$2,184 per annum. The lands so demised were assessed in the roll of immoveable property and school taxes, for the years commencing the 1st May, 1912, and the 1st May, 1913, at a capitalised value of \$27,000, and in respect thereof a demand was made upon Andrew Baile, as an occupant of Government ground, for an annual tax of \$405 for each year, which amounted with interest to the sum of \$850.61. The sum of \$405 included \$270, being 1 per cent. on the capitalised value of \$27,000, and a further sum of \$135 as school taxes. The appellants brought an action to recover \$850.61. Andrew Baile did not defend the action, but the Attorney-General of Canada intervened, claiming that Article 362A, above set out, was *ultra vires* of the Quebec legislature, and unconstitutional, in so far as it applied to occupants of lands belonging to the Crown in the right of the Dominion of Canada, and that the land, contained in the demise to Andrew Baile, was exempt by virtue of Section 125 of the British North America Act. The case came, in the first instance, before the Recorder of Quebec, who decided against the contention of the Attorney-General for Canada, but this decision was reversed in a judgment of the Appeal Side of the Court of King's Bench for the Province of Quebec. Special leave to appeal against this judgment to His Majesty in Council was granted on 22nd July, 1920.

The exhibits set out in the record contain the tax account for the years 1912-1913 directed to Andrew Baile, who is described as "occupant of Government ground," and as debtor to the City of Montreal "for annual assessments," amounting with interest in 1912 and 1913 to the sum of \$850.61, and extracts from the valuation and assessment roll of immovable property and school taxes for the years commencing the 1st May, 1912, and the 1st May, 1913. These extracts show that the sum of \$405 is made up of 1 per cent. on the capitalised value of the property, \$270, and of \$135 for school taxes. It is unnecessary to refer separately to the school taxes. They do not raise any special issue. Section 393 of the Charter enacts that the roll for school taxes may be included in the register containing the assessment roll for immovables, and with the same formalities.

Section 362A of the Charter of the City of Montreal is one of a series of sections providing for assessments and taxation in the City of Montreal. Section 361 enacts that all immovable property situated within the limits of the City shall be liable to taxation and assessment, except such as may, by the subsequent provisions of the Charter, be declared exempt therefrom. The appellants do not under this section claim to tax Crown property within the City occupied by the Crown or by persons occupying as holders of an official position under the Crown, or to question the immunity from provincial taxation of such property under Section 125 of the British North America Act 1867. It is alleged, however, by the respondent, the Attorney-General for Canada, that although the appellant is making no claim to tax property of the Crown, occupied by the Crown, or by persons occupying as holders of an official position under the Crown, yet in effect the City is seeking indirectly to tax such property and that such taxation is *ultra vires* of the provincial legislature. Their Lordships agree in the proposition that it would be *ultra vires* to attempt to impose indirectly taxation which cannot be imposed directly.

On the other hand the respondent does not allege that persons occupying Crown property for commercial or industrial purposes are not liable to provincial taxation in respect of their tenancy or occupation, provided that the taxation is imposed in such a form that it is in reality a taxation on the interest of the tenant or occupant, and not on the property of the Crown. It would not be possible after the decision of their Lordships in *Smith v. Vermillion Hills Rural Council*, 1916, 2 A.C. 569, to contend that tenants who occupy Crown property, not as officials of the Crown, but for commercial or business purposes, are not liable to provincial taxation so long as the assessment is based on their interest as occupants.

In *Smith v. Vermillion Hills Rural Council* it was held that the statutes imposing the taxation were not *ultra vires* of the Legislature of Saskatchewan. The following passage from the judgment (page 573) designates clearly the contentions raised in that appeal:—

“The appellant was duly assessed in respect of the land comprised in the two leases, and the question is whether the assessment was valid. It is contended for the appellant that the tax is sought to be imposed on the land itself, which belongs to the Crown in right of Canada, and not on any individual who is interested in it. For the respondents, on the other hand, it is argued that all that is taxed is the interest of the appellant as a tenant of the land and not the land itself as owned by the Crown.”

Their Lordships decided in favour of the latter of these contentions on the construction of the Saskatchewan statutes.

Sub-section 6 of Section 361 of the Charter empowers the Council of the City to make bye-laws to impose and levy on taxable immovable property in the City an assessment not to exceed 1 per cent. of the annual value of such property according

to the valuation roll, such assessment to be a charge upon the immovable property, and the owners thereof to be personally liable therefor. No copy of the bye-laws was attached to the case, but it was assumed throughout the argument that they had been made in due form. Section 362 exempts certain immovable property from the ordinary and annual assessments. Then follows the critical Section 362A. It is not necessary to set this section out again, but the persons on whom the tax is imposed under its provisions are persons occupying for commercial or industrial purposes buildings or lands belonging to His Majesty, that is to say, occupants, and not owners. The taxation is imposed as an annual charge or rate, and the occupant is made liable to pay on an annual assessment. The assessments in question in this appeal are annual assessments, as shown in the exhibits of the tax account, and by the extracts from the valuation and assessment roll of immovable property.

The question raised in this appeal is, however, in the main dependent on the further enactment that the occupants shall be taxed as if they were the actual owners of immovables and shall be held to pay the annual and special assessments, the taxes, and other municipal dues. The effect of this is that the occupants are made liable to pay on an annual assessment, not to exceed 1 per cent. of the capitalized value of the occupied property. The method of assessment determines the amount for which an occupier is liable during his occupancy, but does not alter the incidence of the taxation or transfer the incidence from the occupant to the owner. There is no suggestion that the assessment, in the case under appeal, has not been fairly ascertained, or that there has been any attempt to differentiate between the tenants of the Crown lands and the tenants of private individuals or corporation, to the disadvantage of the Crown tenants.

The ultimate incidence of taxation imposed on tenants, as the occupants of lands, is a matter on which economic experts have expressed different opinions. If, however, municipal taxation is to be regarded as *ultra vires*, on the ground that the ultimate incidence of taxation, or some portion of it, may or will fall on the owner, it is difficult to see in what form such taxation could be validly imposed. The question to be determined is the simpler one, whether the taxation, which is impeached, is assessed on the interest of the occupant, and imposed on that interest. In the opinion of their Lordships the interest of an occupant consists in the benefit of the occupation to him, during the period of his occupancy, and does not depend on the length of his tenure. The annual assessment, to which objection is taken, is an assessment for which the tenant is only liable so long as his occupancy continues and which ceases so soon as his occupancy is determined. If on the cessation of his tenancy the Crown chooses to leave the land unoccupied or to occupy the land by an official acting in his official capacity, there would be no further liability to taxation

under Section 362A of the Charter affecting either the land or the Crown. In the case under appeal the tenant is paying an annual rental of \$2,184, but is assessed at an annual aggregate charge, including school taxes, of \$405, which is somewhat less than one-fifth of the rental.

In assessing the annual interest for taxation of an occupant of land, every occupant is assessed as the person for the time being in beneficial occupation of the land taxed. Any method of assessment, based on variations in the duration of tenure, would inevitably result in an unequal distribution of the tax burden and, if applied to the occupants of Crown lands, would unfairly increase the burden on the occupants of lands owned by private individuals or corporations.

Their Lordships in this respect agree with the reasons given in the judgment of Meredith, C.J.O. (*Re Town of Cochrane and Cowan*, Ont. L.R., vol. 50 (1921), 169) :—

“I see no reason why a provincial legislature may not provide that, in assessing the interest of an occupant of Crown lands, or of any other person on them, it shall be assessed according to the actual value of the land, or, in other words, that the taxes payable by him shall be based on that value; the manifest injustice that would otherwise exist, at all events in the case of an occupant or tenant, is obvious. He would be assessed only for the value of his interest, which might be little or nothing, while his neighbour, who is an occupant or tenant of property owned by a private person, would be taxed on the actual value of the land.”

The only remaining question is one of procedure. In the present case an action was brought for recovery of the amount due, and no objection was raised to this form of procedure. In addition the provisions to recover arrears of taxation by distress of the goods and chattels of the person bound to pay the same, and of all goods and effects in his possession in whatever place such goods and effects may be found, saving the exemptions provided by law under Section 287 of the Charter, would in ordinary cases be available against a tenant of the Crown in the same way as against any other tenant. The provision in Section 18 of the Charter would not be available against Crown property, but it has not been attempted to enforce this provision.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and the judgment of the Court of King's Bench set aside, and that the judgment of the Recorder of the City of Montreal should be restored. The Attorney-General of Canada will pay the appellants' costs. There will be no costs of the intervener, the Attorney-General of Quebec.

In the Privy Council.

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THE CITY OF MONTREAL

v.

THE ATTORNEY-GENERAL OF CANADA

AND

THE ATTORNEY-GENERAL OF QUEBEC.

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DELIVERED BY LORD PARMOOR.

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