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HOUGHTON LAND CORPORATION LIMITED (PLAINTIFF) ..... APPELLANT; *Oct. 5. *Dec. 15.

AND

THE RURAL MUNICIPALITY OF RICHOT AND JOSEPH JOYAL (DEFENDANTS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Appeal to Supreme Court of Canada—Jurisdiction—Title to land—Action to set aside tax sale—Seed Grain Act, Municipal Act, Assessment Act, Man. (R.S.M. 1913, cc. 178, 133, 134).

Plaintiff sued to set aside a tax sale of its land by defendant municipality (in Manitoba), claiming that it was illegal because made for default in payment of notes given to the municipality by the plaintiff's tenant for moneys advanced to the tenant for seed grain, and for the cost of a well bored for the tenant, on the land. The advances for seed grain and the cost of the well amounted to $530. The land was worth over $2,000. Plaintiff's action was begun after one year from the day of the sale. The action was dismissed by Mathers C.J.K.B. (35 Man. R. 331) whose judgment was affirmed by the Court of Appeal for Manitoba (35 Man. R. 551). Plaintiff (whose application for leave to appeal was refused by the Court of Appeal) appealed *de plano* to the Supreme Court of Canada, and defendants moved to quash the appeal for want of jurisdiction.

Held, that the motion to quash the appeal should be refused; whether plaintiff still retained its right to redeem, and whether, through the effect of the "curative" section of the *Assessment Act* (Man.) it was precluded from obtaining the relief sought, were questions to be considered and were properly matters in controversy; the application to the case of the relevant sections of the *Municipal Act* and the *Assessment Act* was a point in dispute; it was therefore apparent that, as a result of the litigation, when all questions raised on both sides had been considered and according as the respective contentions were held well or ill founded, plaintiff's title might be affirmed or denied to lands the value of which exceeded the amount required to found jurisdiction for appeal.

Idington J. held that the right of appeal depended on whether or not the right of redemption still existed, and as this was not settled on the facts before the court the motion should be enlarged to be disposed of on the argument of the appeal.

MOTION by the respondents to quash, for want of jurisdiction, the plaintiff's appeal to this Court from the

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

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judgment of the Court of Appeal for Manitoba (1) affirming the judgment of Mathers C.J.K.B. (2) dismissing the plaintiff's action to set aside a tax sale by defendant municipality of certain lands. The facts of the case are sufficiently stated in the judgments now reported. The motion was dismissed with costs.

D. H. Laird K.C. for the motion.

E. F. Newcombe contra.

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

RINFRET J.—This is a motion to quash for want of jurisdiction. The plaintiff's statement of claim alleges that, in May, 1919, it was the legal owner of certain lands and entered into an agreement of sale of these lands to certain parties named Edward McGee and Fred McGee, who took possession; that Fred McGee subsequently executed a quit-claim to the plaintiff of his interest, and that Edward McGee continued to occupy as tenant of the plaintiff; that the defendant municipality, without the consent of the plaintiff, advanced seed grain to the said Edward McGee and, at his request, bored a well upon the lands in question, for all of which it took from him promissory notes in settlement; that the defendant municipality never gave notice to the plaintiff of the advances but, on default of payment of the notes, made a claim upon the plaintiff for the amount thereof, for which the lands were sold at a tax sale to the defendant Joyal.

The plaintiff claimed that this sale was illegal and asked that it be declared null and void and set aside. The action was dismissed (2). This was affirmed in appeal (1). The plaintiff applied to the Court of Appeal for leave to appeal to the Supreme Court of Canada. The application was refused. The plaintiff thereupon proceeded to appeal *de plano*, and security was allowed by a judge of the Court of

(1) 35 Man. R. 551; [1926] 2 W.W.R. 51.

(2) 35 Man. R. 331; [1925] 3 W.W.R. 695.

Appeal, who however said that his order " shall not be construed as giving leave to appeal " or " affecting in any way the question of the jurisdiction of the Supreme Court of Canada."

The respondents now move to quash on the ground that the case is not appealable.

They argue that the only question involved in the case is whether

> the amount required to redeem is some $530 less than the amount certified as arrears of taxes to the District Registrar who is now dealing with the application of Joyal for a certificate of title.

This sum of $530 represents the advances for the seed grain and the well repudiated by the plaintiff.

We do not think the litigation is so limited.

The tax sale took place on the 27th October, 1922. The action was begun on the 3rd January, 1924, or after the expiration of one year from the day of the sale.

The lands in question are proven to be worth well over $2,000.

Plaintiff asserts its ownership of these lands and claims to have been illegally divested of its title by the alleged illegal proceedings of the municipality.

Joyal, the tax purchaser, resists the plaintiff's claim and submits his rights to the court.

As a consequence, it may be that the plaintiff still retains the right to redeem; or it may be that, through the effect of the so-called curative section of the *Assessment Act,* plaintiff is now precluded from obtaining the relief sought by it; but these are questions which will have to be considered and they are properly matters in controversy. The application to the case at bar of the relevant sections of the *Municipal Act* and the *Assessment Act* is one of the points in dispute.

For the present, therefore, it is apparent that, as a result of this litigation, when all questions raised on both sides have been considered and according as the respective contentions are held well or ill founded, plaintiff's title may be affirmed or denied to lands the value of which clearly exceeds the amount required to found jurisdiction for appeal to this court.

We think, for these reasons, that the motion fails and should be dismissed with costs.

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Idington J.

IDINGTON J.—Assuming the lands have been sold and the possibility of redemption thereof by payment of the tax has passed, I agree with my brother Rinfret J. in the conclusion he has reached that the title of the land is in question and, therefore, as that seems to be worth over two thousand dollars, that there would be no doubt of our jurisdiction to hear the appeal. If, however, the time for redemption has not elapsed and it is still possible for the appellant to redeem the land for $800 or $900, or any sum less than $2,000, I can see no right to appeal here. In such a case the title to land is not necessarily involved, it is the damage done by casting a cloud upon the title and this does not, in itself, I think, give jurisdiction to come here.

As the evidence, in my view, does not conclusively establish either of the alternatives I have put, I would prefer the motion to be enlarged to be disposed of on the argument of the appeal.

Motion dismissed with costs.

Solicitor for the appellant: *Eric Browne-Wilkinson.*

Solicitors for the respondent The Rural Municipality of Richot: *Munson, Allan, Laird, Davis, Haffner & Hobkirk.*

Solicitor for the respondent Joseph Joyal: *C. M. Boswell.*