THE CORPORATION OF THE TOWNSHIP OF NORTH YORK (*Plaintiff*) APPELLANT;

AND

THE MUNICIPALITY OF METROPOLITAN TORONTO (*Defendant*) RESPONDENT.

1965

*Feb. 5, 8
Mar. 4

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Municipal corporations—Supplementary estimate certified to Metropolitan Council by Executive Committee—Estimates for the year already adopted—Whether by-law levying the additional sum upon area municipalities validly enacted—The Municipal Act, R.S.O. 1960, c. 249, s. 206(1)(a) and (2)—The Municipality of Metropolitan Toronto Act, R.S.O. 1960, c. 260, ss. 229(1), 230(1), (2) and (10).

Pursuant to the power conferred by subs. (2) of s. 116a of *The Municipality of Metropolitan Toronto Act,* R.S.O. 1960, c. 260, as enacted by 1961-62, c. 88, s. 10 and amended by 1962-63, c. 89, s. 8, the Council of the defendant adopted the recommendation of its Executive Committee that a subsidy of $2,500,000 be paid to the Toronto Transit Commission. For this expenditure a supplementary estimate was certified to the Council by the Executive Committee. The Metropolitan Council enacted by-law 1890 levying the additional sum of $2,500,000 upon the area municipalities, including the plaintiff, and requiring the treasurer of each municipality to pay to the treasurer of the defendant the amounts thereby levied. Prior to the passing of by-law 1890 the plaintiff had enacted a rating by-law and pursuant thereto had commenced sending out tax bills.

The plaintiff contended that by-law 1890 was invalid on the ground that since the Council had previously adopted its estimates for the year, enacted its rating by-law 1869 and set in motion the tax collecting procedures for the year its statutory power was exhausted and it was not competent thereafter to make a further tax levy for the same year. The plaintiff's action for a declaration that by-law 1890

*PRESENT: Cartwright, Martland, Judson, Ritchie and Hall JJ.

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was *ultra vires* and void and claiming consequential relief was dismissed by the trial judge. The trial judgment having been affirmed, on appeal, by the Court of Appeal, the plaintiff further appealed to this Court.

Held: The appeal should be dismissed.

Upon the enactment of subs. (2) of s. 116a followed by the decision of the Metropolitan Council to contribute the sum of $2,500,000 to the cost of operating the transportation system during the year 1963 that amount became a sum "required during the year for the purposes of the Metropolitan Corporation" within the meaning of s. 229(1) of the *Metropolitan Act* and part of the "proposed expenditure of the year" within the meaning of s. 206(1)(*a*) of *The Municipal Act*. There could be no doubt of the duty of the Executive Committee to include this sum in the estimates for the year 1963 or of the power of the Metropolitan Council to include it in the levy made upon the area municipalities pursuant to s. 230(1) of the *Metropolitan Act* were it not for the fact that estimates for the year had already been adopted and a levying by-law passed. The trial judge in rejecting the plaintiff's argument that once by-law 1869 had been passed the power of the Metropolitan Council to make a levy was exhausted for that year relied on cl. (*j*) of s. 27 of *The Interpretation Act*, R.S.O. 1960, c. 191. Here it was held, even without having recourse to that clause, that the Courts below were correct in the unanimous view that on their true interpretation s. 206(1)(*a*) and (2) of *The Municipal Act* and ss. 229(1), 230(1), (2) and (10) of the *Metropolitan Act* empowered the Executive Committee to certify the supplementary estimate calling for the payment of $2,500,000 and empowered the Metropolitan Council to adopt that estimate and to pass by-law 1890.

Robertson v. City of Toronto (1930), 66 O.L.R. 38, applied; *In re Hogg v. Rogers* (1865), 15 U.C.C.P. 417, explained.

APPEAL from a judgment of the Court of Appeal for Ontario affirming a judgment of Hughes J. dismissing an action for a declaration that a certain by-law was *ultra vires* and void and claiming consequential relief. Appeal dismissed.

H. E. Manning, Q.C., and *W. S. Rogers, Q.C.*, for the plaintiff, appellant.

Hon. R. L. Kellock, Q.C., and *A. P. G. Joy, Q.C.*, for the defendant, respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from a judgment of the Court of Appeal for Ontario affirming a judgment of Hughes J. dismissing an action brought by the appellant asking for a declaration that by-law no. 1890 passed by the

respondent on May 7, 1963, is *ultra vires* and void and claiming consequential relief.

The matter was dealt with by Hughes J. on a motion for judgment based on the pleadings and on an agreement by the parties as to the facts.

The agreement as to the facts is set out in full in the reasons for judgment of Hughes J.[1]. The Township of Etobicoke which was also a plaintiff has not appealed to this Court and the appellant abandoned in the Court of Appeal the grounds of attack on the by-law based on alleged errors in procedure, consequently a comparatively brief statement of the facts will be sufficient to make clear the question raised for decision.

The ground on which the appellant argues that by-law 1890 is invalid is that since the Council of the respondent had on April 5, 1963, adopted its estimates for the year, enacted its rating by-law no. 1869 and set in motion the tax collecting procedures for the year its statutory power was exhausted and it was not competent thereafter to make a further tax levy in the same year.

The appellant is one of thirteen area municipalities which constitute the Municipality of Metropolitan Toronto.

Under *The Municipality of Metropolitan Toronto Act,* R.S.O. 1960, c. 260, hereinafter referred to as "the *Metropolitan Act*", the Council in each year fixes a metropolitan rate apportioned among the area municipalities. Upon the Metropolitan Clerk certifying to each of the area municipalities the particulars of the levy made against it, it becomes the duty of the area municipality to take the appropriate measures to see that the metropolitan levy and the levies within the control of the area municipality are put in hand for collection and collected. The metropolitan levy when properly made becomes a debt of the area municipality.

The assessment rolls upon which these levies are made are rolls of the area municipalities but are prepared by the Metropolitan Assessment Commissioner, who is also the assessment commissioner *ex officio* of each area municipality. The levy in each area municipality, based on the assessment roll of the year, is made by the council of that

[1] [1964] 1 O.L.R. 507 at pp. 508 to 512.

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municipality by its own rating by-law (or by-laws) which form the basis upon which the proper officer of the area municipality prepares the collector's roll for the year, sends out the tax bills and looks after the collection of the taxes.

On April 26, 1963, subsequent to the passing of by-law 1869 but prior to the passing of by-law 1890, s. 116*a* of the *Metropolitan Act,* as enacted by s. 10 of 1961-62 (Ont.), c. 88, was amended by 1962-63, c. 89, s. 8, adding thereto the following subsection:

> (2) The Metropolitan Corporation may contribute to the cost of operating the transportation system operated by the Commission.

(*i.e.* The Toronto Transit Commission).

Pursuant to the power conferred by this subsection, the Council of the respondent on May 3, 1963, adopted the recommendation of its Executive Committee that a subsidy of $2,500,000 be paid in 1963 to the Toronto Transit Commission, such payment to be conditional upon the revocation of an increase in fares recently instituted by the Commission. For this expenditure a supplementary estimate was certified to the Council on the same date by the Executive Committee.

On May 7, 1963, the Metropolitan Council enacted by-law 1890 levying the additional sum of $2,500,000 upon the area municipalities, including the appellant, and requiring the treasurer of each municipality to pay to the treasurer of the respondent the amounts thereby levied. Prior to the passing of by-law 1890 the appellant had enacted a rating by-law and pursuant thereto had commenced sending out tax bills.

In my opinion by-law 1890 was validly enacted.

It is provided by subss. (1) and (2) of s. 12 of the *Metropolitan Act* that the Metropolitan Council may by by-law provide for the appointment of an Executive Committee and authorize it to exercise with respect to the Metropolitan Corporation any or all of the powers of a board of control under subs. (1) of s. 206 of *The Municipal Act* and that in such case subss. (2) to (15) and (17) to (19) of that section apply *mutatis mutandis.* By by-law enacted on October 30, 1962, the respondent constituted an Executive Committee and authorized it to execute the powers so conferred.

Subsections (1) and (2) of s. 206 of *The Municipal Act* so far as relevant are as follows:

206. (1) It is the duty of the board of control,

(*a*) to prepare estimates of the proposed expenditure of the year and certify them to the council for its consideration;

* * *

(2) The council shall not appropriate or expend, nor shall any officer thereof expend or direct the expenditure of any sum not provided for by the estimates or by a special or supplementary estimate certified by the board to the council, without a two-thirds vote of the council authorizing such appropriation or expenditure, but this prohibition does not extend to the payment of any debenture or other debt or liability of the corporation.

Section 229(1) of the *Metropolitan Act* is as follows:

(1) The Metropolitan Council shall in each year prepare and adopt estimates of all sums required during the year for the purposes of the Metropolitan Corporation, including the sums required by law to be provided by the Metropolitan Council for school purposes and for any local board of the Metropolitan Corporation, and such estimates shall set forth the estimated revenues and expenditures in such detail and according to such form as the Department may from time to time prescribe.

Subsections (1) and (2) of s. 230 of the same Act are as follows:

(1) The Metropolitan Council shall in each year levy against the area municipalities a sum sufficient

(*a*) for payment of the estimated current annual expenditures as adopted;

(*b*) for payment of all debts of the Metropolitan Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the Metropolitan Corporation is liable under this Act.

(2) The Metropolitan Council shall ascertain and by by-law direct what portion of the sum mentioned in subsection 1 shall be levied against and in each area municipality.

Subsection (10) of s. 230 is as follows:

(10) One by-law or several by-laws for making the levies may be passed as the Metropolitan Council may deem expedient.

Upon the enactment of subs. (2) of s. 116*a* followed by the decision of the Metropolitan Council to contribute the sum of $2,500,000 to the cost of operating the transportation system during the year 1963 that amount became a sum "required during the year for the purposes of the Metropolitan Corporation" within the meaning of s. 229 (1) of the *Metropolitan Act* and part of the "proposed expenditure of the year" within the meaning of s. 206(1)

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(*a*) of *The Municipal Act*. There could be no doubt of the duty of the Executive Committee to include this sum in the estimates for the year 1963 or of the power of the Metropolitan Council to include it in the levy made upon the area municipalities pursuant to s. 230(1) of the *Metropolitan Act* were it not for the fact that estimates for the year had already been adopted and a levying by-law passed. The appellant argues that once by-law 1869 had been passed the power of the Metropolitan Council to make a levy was exhausted for that year. Hughes J., in rejecting this argument, relied on cl. (j) of s. 27 of *The Interpretation Act*, R.S.O. 1960, c. 191, which reads as follows:

> 27. In every Act, unless the contrary intention appears,
>
> * * *
>
> (*j*) words importing the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males and the converse;

Even without having recourse to that clause, I would agree with the unanimous view of the Courts below that on their true construction the sections which I have quoted above empowered the Executive Committee to certify the supplementary estimate calling for the payment of the $2,500,000 and empowered the Metropolitan Council to adopt that estimate and to pass by-law 1890.

Whether or not it was strictly necessary to the decision of that case, I rely, as did Hughes J., on the following passage in the unanimous judgment of the Court of Appeal delivered by Middleton J. A. in *Robertson v. City of Toronto*[1], at pp. 44 and 45:

> In cities where there is a board of control, sec. 221 governs, and it casts upon the board the duty of preparing estimates of the proposed expenditure for the year, and certifying these estimates to the council for consideration. It also contains a very important provision, found in subsec. 2, that the council shall not appropriate or expend any sum not provided for by the estimates 'or by a special or supplementary estimate certified by the board to the council, without a two-thirds vote of the council authorising such appropriation or expenditure.'
>
> This indicates that there is not a finality in the first estimates passed by the municipality, and this is emphasized by the provision of sec. 307(2), that 'one by-law or several by-laws for assessing and levying the rates may be passed as the council may deem expedient.'

The sections under consideration in that case did not differ in any material particular from those with which we are concerned.

[1] [1930], 66 O.L.R. 38.

For the appellant reliance was placed upon the following passage in the unanimous judgment of the Court of Common Pleas of Upper Canada delivered by J. Wilson J. in *In re Hogg v. Rogers*[1], at p. 419:

> The general principle is, that levies for municipal purposes shall be made upon the revised assessment of the year in which they are made. *It is true that one rate for the year is only struck by the municipal authorities;* but suppose a sheriff got an execution either at a suit of the Crown or of a municipality in the month of January, would he be justified in delaying to levy until the revised assessment roll of that year was completed and a certified copy given to the municipality?

What was actually decided in that case was that school trustees were not restricted by the applicable legislation to making one levy during a year but might levy at any time as need required it. The words which I have italicized in the passage quoted were, I think, a statement as to the prevailing practice rather than a decision as to the powers of the municipal authorities. It seems clear that the Court assumed that the answer to the rhetorical question with which the passage concludes would be in the negative.

I share the view of the Court of Appeal that it is unnecessary to determine whether the decision of the Metropolitan Council to pay the sum of $2,500,000 created a "debt" of the corporation within the meaning of that word as used in s. 206(2) of *The Municipal Act* or in s. 230(1)(*b*) of the *Metropolitan Act;* subject to this, I am in substantial agreement with the reasons of Hughes J. dealing with the construction and effect of the statutory provisions which I have quoted above and I agree with the conclusion at which he arrived.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the plaintiff, appellant: Manning, Bruce, Paterson & Ridout, Toronto.

Solicitors for the defendant, respondent: Blake, Cassels & Graydon, Toronto.

[1] (1865), 15 U.C.C.P. 417.