Supreme Court of Canada
MacLeod (Town) v. Campbell, (1918) 57 S.C.R. 517
Date: 1918-11-18

The Municipality of the Town of Macleod (Plaintiff). Appellant;

and

Agnes M. Campbell (Defendant). Respondent

1918: October 15; 16; 1918: November 18.

Present:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Brodeur JJ.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Assessment and taxes—Municipal corporation—Excessive valuation—Statutory appeals—Res judicata—"The Town Act", (Alta) 1911-12, c. 2, ss. 285, 267.

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When a town Act provides a means of relief, in case of excessive assessment, by way of appeal to a municipal Court of Revision and thence to a District Judge, the decision not appealed against of either of these courts, confirming the assessment, is *res judicata*; the assessed party cannot afterwards invoke such excessive assessment as a ground of defence in an action for the recovery of the tax.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Alberta[1], which affirmed the judgment of Ives J. at the trial, by which the plaintiff's action was dismissed with costs.

The appellant, incorporated under the provisions of "The Town Act" of the Province of Alberta, brought action against the respondent for taxes in respect of certain real property owned by her within the limits of the municipality, alleging that the respondent was duly assessed for such property. The respondent founds her defence in particular upon the provisions of section 267 of "The Town Act," complaining that the assessment was obviously excessive and illegal. The appellant's answer was that, no appeal having

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been taken prior to the confirmation of the assessment by the municipal council, the respondent has no status to resist payment of the taxes.

A. H. Clarke K.C. for the appellant.
Lafleur K.C. and E. V. Robertson for the respondent.

THE CHIEF JUSTICE.—I concur with Mr. Justice Anglin.

IDINGTON J.—The judgment of the learned trial judge upheld by the Court of Appeal for Alberta decided that because the assessment complained of is obviously excessive and that the assessment of the lands in question does not bear a fair and just relation to

[1] 41 D.L.R. 357; [1918] 2 W.W.R. 718.

the value at which other land in the immediate vicinity is assessed, this action for the recovery of taxes imposed should be dismissed with costs.

The Act under which the assessment was made provides a means of relief in such cases by way of appeal to the municipal court of revision and from that court to the District Judge. The respondent had taken an appeal from the assessment to the Court of Revision Which consisted of members of the appellant's council, and that court, of which four members heard the appeal, decided to confirm the assessment, and dismissed the appeal.

The respondent did not pursue the matter further by an appeal to the District Court Judge which was open to her. The result was that the assessment roll stands supported by section 285 of "The Town Act" which reads as follows:—

> 285. The roll as finally passed by the council and certified by the assessor as so passed shall be valid and bind all parties concerned notwithstanding any defect or error committed in or with regard to such roll or any defect, error or mis-statement in the notice required by section 276 of this Act or any omission to deliver or to transmit such notice.

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I have long entertained the opinion that the only remedy which a ratepayer, complaining of an assessment being excessive, has, is to pursue such remedies as the "Assessment Act" may furnish for the redress of such a grievance.

If in the way of exceeding its jurisdiction a municipality or its officers have attempted to impose a tax which they, or it, have no power to impose, as, for example, in the case of property exempt from taxation, such taxes cannot be collected for the attempted imposition thereof is void.

It has been strenuously argued before us that inasmuch as the basis of such taxation as imposed and in question herein is imperatively required by law to rest upon an actual value, of the kind defined, that a serious departure therefrom is also beyond the jurisdiction of appellant and hence void.

Such a view of the law would be to render the collection of taxes dependent in many cases upon the very doubtful result of an issue to try what is actual value such as defined in the statute in question herein.

No decision binding us has ever gone so far.

And experience, for example in the hearing of many appeals in cases of expropriation here, tempts one to suggest that the result of such a decision as sought

herein by maintaining the judgment appealed from, would bring some appalling consequences, not only to us but also to those concerned in collecting taxes.

Of course that is no reason for shrinking from so declaring the law if we so find it, but it makes one pause and reflect upon the view presented by many judges in dealing with similar legislation. I may be permitted to say that I never knew any one better qualified to speak upon such a subject than the late Chief Justice Hagarty, who so long presided in Ontario

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courts, including the Court of Appeal for Ontario, and in dealing with such a proposition in the case of *Canadian Land & Emigration Co.* v. *The Municipality of Dysart et al.*[2], he spoke as follows:—

> If we were to pronounce illegal some of the proceedings here complained of, I am afraid we would be exacting an ideal perfectibility in the working of our municipal system. * * * I think the design of the legislature was to work out the whole system of assessment by the machinery provided. Firstly, the action' of the assessor; secondly, the appeal to the Court of Revision; thirdly, the final appeal to the County Judge or stipendiary magistrate. * * * The intervention of the courts in the manner sought for by this appeal would be disastrous to the working of the municipal system. If the Court of Revision is to be in effect prohibited from enforcing the assessment, what is to be done?

It seems to me that this was good law and sound sense (which generally coincide) and must be accepted as our guide.

The logical results of the maintenance of the argument presented on behalf of respondent would be that an over or under valuation in the assessment would be void for want of jurisdiction and hence bring the case within the line of cases such as furnished by decisions on exemption already referred to, as the statute only permits actual value as defined as the basis therefor, and hence that that issue must be determined by trial of the fact in each case of such like dispute. There is no room for drawing any other line if that mode of thought is to be applied in deciding this case.

It is not the excessive departure from actual value as defined that is involved in such a proposition. Perhaps a hair divided the false and true. The absolutely true line must be discovered if the proposition is sound.

I cannot think that such is the correct interpretation and construction of the statute in question.

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[2] 12 Ont. App. R. 80.

The evident purpose of the legislature was to tax

such actual values as the assessor, and the special appellate courts designated, might determine to be the true value of the property assessed.

When the question of excessive assessment is raised I can see another possible alternative in the way of a defence founded thereon. It is a finding of fraud which vitiates everything.

There is much to be said as to this appellant's assessor's conduct being akin to that which would lay a good foundation for such a defence when he treated, as he says, the line laid down for him in the statute as a joke.

But there are others involved besides him who are said to be respectable men composing the town council.

Although such a line of attack was open to respondent she did not pursue it.

I only refer to it now as apparently a quite possible defence which some municipal authorities may have to face if they persistently disregard the law, as there is too much reason to believe there is a tendency to do in that regard in some places.

If ever such a case arise the party suffering and feeling he cannot succeed by the ordinary course of appealing must raise the issue distinctly.

As the law stands I see no relief for those upon whom excessive assessments are imposed but the remedies by way of appealing or a charge of fraud if it exist.

I am not surprised to learn from Chief Justice Harvey's judgment that subsection 3 of section 267 of "The Town Act" has done much harm. It facilitates and probably protects the perpetration of fraud by putting an impediment in the way of appellants who should be encouraged as so many inspectors, as it were, checking the careless assessor's slovenly work.

It tends to confusion of thought and to defeat the purpose of a just valuation which is the object of the law.

The appeal should be allowed but the costs should be withheld. I feel so inclined for I agree with the courts below that there has not been that observance of the statute which there should have been.

DUFF J.—I am of opinion that this appeal should be allowed with costs.

ANGLIN J.—The purport and intent of section 285 of "The Town Act," having regard to the provisions by which it is preceded, is to make the assessment roll valid and binding in respect of all matters within the cognizance of the Court of Revision. The chief subject of the jurisdiction of that court is the determination of appeals based on the ground that assessments are "too high or too low." In regard to these questions its jurisdiction is exclusive.

The complaint of the defendant is that her assessment is "too high"—too high because the assessor flagrantly disregarded the basis of assessment prescribed by the legislature—but nevertheless "too high." To make an assessment of the property in question as part of the "ratable land in the town" (ss. 265 and 266) was the duty of the assessor. Whether in the making of it he erred wilfully or through ignorance as to the application and effect of s. 267, it was an assessment which it was within his jurisdiction to make and, therefore, essentially different from attempted assessments of exempted property held so utterly void, because made wholly without jurisdiction that they would not support taxation at all in such cases as *Toronto Railway Co.* v. *City of Toronto*[3]; *Canadian Oil Fields Co.*

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v. *Village of Oil Springs*[4]. While the method of assessment prescribed by section 267 is more than merely directory, I cannot regard an intention to follow its provisions as a condition of the jurisdiction to make an assessment. An assessment in fact for an amount equal to the "actual cash value" of the land would not be a nullity merely because in arriving at it the assessor had disregarded or ignored section 267 of the statute.

That it is within the jurisdiction of the Court of Revision, the District Court Judge, and, on appeal from him, of this court in cases involving an assessment of appealable amount to entertain taxpayers' appeals based on excessive assessments made in utter disregard of the method of assessment prescribed by the legislature is, I think, sufficiently

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[3] [1904] A.C. 809 at page 815.
[4] 13 Ont. L.R. 405.

established by such decisions as *Rogers Realty Co.* v. *Swift Current* (2), where my brother Idington pointed out

> that in making the assessment in question the assessor had ignored the statute which ought to have bound him—

precisely as in the case at bar. Although in that case the question of jurisdiction does not appear to have been raised in argument it should scarcely be assumed that this court unconsciously exercised jurisdiction to reduce the assessment which it would not possess unless the Court of Revision had it in the first instance.

Moreover, the defendant exercised her right of appeal to the Court of Revision in the present case. She did not further appeal as she might have done, against its adverse judgment to the District Court Judge and, had his decision been likewise adverse, to this court. *Rogers Realty Co.* v, *Swift Current*[5]; *Grierson* v. *Edmonton*[6]; *Pierce* v. *Calgary*[7], are

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recent instances of such appeals having been successfully taken. The judgment of the Court of Revision upon a matter within its jurisdiction is binding on the defendant as *res judicata.* It cannot be ignored in this or any other court merely because deemed erroneous either in law or in fact. As Mr. Justice Burton said, in *London Mutual Ins. Co.* v. *City of London*[8]:

> If in the exercise of his functions, but acting within his jurisdiction, the assessor does an erroneous act, it is no more null and void, while unquestioned by appeal, than an erroneous decision of this court on a matter within its jurisdiction, while unreversed. * * * The legislature has thought fit to entrust the power of adjudicating upon the correctness of that act (an assessment, right or wrong) to certain persons and as a general rule those persons alone can do so.

The observations of Hagarty C.J.O., in *Canada Land & Emigration Co.* v. *Dysart*[9], are also in point as to matters within the jurisdiction of the Court of Revision under section 274 of the "Town Act."

It was suggested in the course of the argument by my brother Duff that whatever may be said of what the assessor did there is nothing to shew that the Court of Revision in dismissing the present defendant's appeal and confirming the assessment ignored the requirements of section 267 of the statute. But, as my learned brother himself pointed out later, if there was really no assessment there probably was no subject matter of appeal

[5] 57 Can. S.C.R. 534; 44 D.L.R. 309; [1918] 2 W.W.R. 214.
[6] [1917] 2 W.W.R. 1138.
[7] 54 Can. S.C.R. 1; 32D.L.R. 90.
[8] 15 Ont. App. R. 629, at p. 633.

within the jurisdiction of the Court of Revision. Moreover, it is probably a fair inference, having regard to the evidence in the present record, that the Court of Revision must have committed the same error as that charged against the assessor. I prefer not to rest my judgment on this somewhat doubtful ground.

Because the only defence, in my opinion, arguable which has been set up raises a question which, I think,

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it was within the jurisdiction of the Court of Revision to determine, subject to appeal, and because, whether the jurisdiction of that court over it is exclusive or not, having been invoked and exercised its unappealed decision establishes a case of *res judicata,* I would, with respect, allow this appeal. The plaintiff is entitled to judgment with costs throughout.

BRODEUR J.—The question in this case is whether the respondent, having been assessed for a property in the town of Macleod and having appealed to the Court of Revision on the ground that the assessment was too high and not having pursued further, can now resist on the same ground an action instituted by the town for the collection of the taxes.

By virtue of the law of Alberta, provision is made as to the way municipal assessments on lands should be made and courts are provided in those statutes for the purpose of hearing and determining whether the assessments are too high or too low.

It appears that the assessors might have put on the lands of the respondent a higher amount than the cash value for which the property should have been assessed; but at the same time it is admitted that the assessment was uniform throughout the town and that no real injustice is being suffered by the respondent as a result of that assessment. However, she appealed to the Court of Revision and she was entitled in case she would have been displeased with the decision of the Court of Revision to go before the District Judge and she could even have come up before the Supreme Court. *Pearce* v. *Calgary*[10]. She seemed to be satisfied with the judgment of the Court of Revision and did not bring her case further. When she was

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[9] 12 Ont. App. R. 80, at page 84.
[10] 54 Can. S.C.R. 1; 32 D.L.R. 790.

sued for the taxes she pleaded that the assessment was too high and should not be maintained.

She relies mostly on a judgment which has been rendered in the Privy Council in the case of *Toronto Railway Co.* v. *City of Toronto* [11]. I think that that case should be distinguished from the present one. In the *Toronto Railway Case* [11] the question to be determined was not the quantum of assessment but the assessability of electric tramways as real estate or as fixtures. The Privy Council decided that the courts which had been established for the purpose of determining whether the assessment was too high or too low could not have jurisdiction in a case where there was a question as to the assessability of the property.

In the present case it is not a question of the validity of the assessment, because it cannot be seriously disputed that the lands in question were to be assessed; but it is simply a question of quantum. This case, then, is very different from the *Toronto Railway Case*[11]. The respondent has found it advisable to go before the courts provided by the statute to have it determined whether her assessment was too high or too low. It becomes *res judicata,* as far as she is concerned, and she could not invoke the same reason in an action for the recovery of the taxes. The judgment of the Appellate Division of the Supreme Court of Alberta which decided in her favour should be reversed.

The appeal should be allowed with costs of this court and of the court below.

Appeal allowed with costs.

[11] [1904] A.C. 809.
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