

1944

AARON G. CLOUGH (PLAINTIFF) . . . . . APPELLANT;

\*May 5.  
\*June 22.

AND

CORPORATION OF THE COUNTY }  
OF SHEFFORD AND OTHERS (DEFEND- } RESPONDENTS;  
ANTS) . . . . . }

AND

ANTONIO GRANDPRE, MIS-EN-CAUSE.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC*Municipal law—Tax sale—Immoveable owned by company—Purchaser—Redemption exercised by creditor of company—Company having ceased to exist at time of redemption—Company appearing as owner on valuation roll—Whether right of redemption exists—Municipal Code, sections 726, 727, 754, 755—C.C. acts 368, 371, 372.*

When an immoveable belonging to a company is sold at a tax sale, the purchaser, in an action "en passation de titre" against the municipal corporation, cannot ask that the redemption exercised by a creditor for and on behalf of that company be declared null and void and set aside, on the ground that, at the time of the redemption, the company had ceased to exist, its charter then alleged to be extinct and to have been forfeited *de jure* by non-user during three consecutive years.

When the right of redemption is exercised under sections 754 and 755 of the Municipal Code, the original purchaser, to whom the immoveable has been adjudicated, has no more rights than to receive back the money paid plus interest. In this case, the creditor was entitled to exercise that right on behalf of the company, even assuming the forfeiture of its charter.

It is not the duty of the secretary-treasurer of a municipal corporation to investigate as to who may be the real owner of an immoveable offered for sale. He is concerned only with what appears on the valuation roll, and, in this case, the company appeared in the roll as owner of the immoveable sold.

\*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

APPEAL, by special leave to appeal granted by this court, from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Surveyer J., and dismissing the appellant's action "en passation de titre".

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The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

*John T. Hackett K.C.* for the appellant.

*Benoit Marchessault* for the respondent.

The judgment of the Court was delivered by

TASCHEREAU J.—In March, 1940, the secretary-treasurer for the corporation of the county of Shefford sold at a tax sale to appellant Clough, an immoveable standing in the name of S.S. Copper Mines Ltd. The purchase price was paid, but notary Bachand, the secretary-treasurer of the county corporation and one of the respondents in the present case, did not deliver to appellant a certificate of adjudication, setting forth the particulars of the sale.

In December, 1941, Bachand filed in the Registry Office of Shefford a notice to the registrar that the immoveable had been redeemed by Elton W. Martin, also one of the defendants, for and in the name of S.S. Copper Mines Ltd.

It is submitted by the appellant that this redemption was null and void, because at the time of this redemption, S.S. Copper Mines Ltd. had ceased to exist, its charter being extinct, having been forfeited *de jure* by non-user during three consecutive years. At the expiration of two years, appellant requested the secretary-treasurer to execute in his favour, in the name of the county corporation, a definite deed of sale of the immoveable, and, upon his refusal, he instituted the present action. In his conclusions he prayed that the redemption by defendant Martin be declared null and void and set aside, and the registration thereof be cancelled and that plaintiff be declared the owner of the said property and entitled to a deed. He also claimed that defendant Bachand in his quality of secretary-treasurer be condemned to produce in court a

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duplicate of the certificate of adjudication required by law to be issued to plaintiff, and that a deed of sale of the said property be ordered executed in favour of plaintiff by the defendant secretary-treasurer, and that, upon default, the judgment to be rendered avail to all legal purposes, and have the same effect, as a deed executed by the defendant county corporation.

This action was dismissed by Mr. Justice Surveyer sitting in the Superior Court and that judgment was unanimously confirmed by the Court of King's Bench (1).

In view of the conclusions which I have reached, it is unnecessary to examine if at the time the redemption was made, the charter of the company was still in force or not. The fate of this case must be determined solely in the light of the provisions of the Municipal Code of the province of Quebec.

When Clough purchased the immovable at the tax sale, he obtained only a precarious title, subject to its redemption during a period of two years. The owner, or any person on behalf of the owner, had, during that period of two years, the right to redeem this immovable by reimbursing to the secretary-treasurer of the Corporation, the price of adjudication with costs and interests. This procedure is authorized by sections 754 and 755 of the Municipal Code which read as follows:

754. The owner of any immovable sold under the provisions of the first chapter of this title (art. 726-753), may, within two years after the date of the adjudication, redeem the same, by reimbursing to the secretary-treasurer of the corporation of the county in which such immovable is situated the amount laid out for the purchase of such immovable, including the cost of the certificate of purchase and the notice to the registrar, with interest at ten per cent per annum, every fraction of a year being reckoned as a year.

755. Any person, whether authorized or not, may, unless a deed of sale has been granted under the second paragraph of article 741, redeem such immovable in the same manner, but only in the name and for the benefit of the person who was the owner thereof at the time of the adjudication.

When this right of redemption is exercised, the original purchaser to whom the immovable has been adjudicated has no more rights, except to receive back the money paid plus interest. In the present case, did E. W. Martin have the right to exercise this right on behalf of S.S. Copper

Mines Ltd., even assuming the forfeiture of the charter? I have no doubt that this question must be answered in the affirmative.

The recourse of a municipality when taxes are not paid is to have the immoveables sold. The secretary-treasurer has no option but to follow the imperative rules of the Code, and the sales must be effected in the way provided for by the law. It is not the duty of the secretary-treasurer of the local corporation to investigate as to who may be the real owner of the immoveable offered for sale. He is concerned only with what appears on the valuation roll, and in the course of the month of November of each year, he must prepare a statement showing (Municipal Code, section 726):

the name and style of every person indebted to the corporation for municipal taxes, as set forth in the *valuation roll* \* \* \*

Before the 20th day of December in each year, he must transmit to the office of the county corporation an extract of such statement (Municipal Code, section 727), and it is also the duty of the secretary-treasurer of the county corporation to sell these immoveables on the second Thursday of the month of March following, after having, before the 8th of January, given public notice, that the immoveables (with the names of the owners as mentioned in the *valuation roll*) will be sold at public auction if the taxes are not paid.

In the present case, the name of the S.S. Copper Mines Ltd. appeared on the valuation roll as owner of the immoveable in question, and the secretary-treasurer of the county corporation had no alternative but to proceed the way he did.

Assuming, as I did before, the forfeiture of the charter of the S.S. Copper Mines Ltd., for the benefit of which the redemption has been made, the legal situation cannot be altered.

Under our system of law, property can never be "res nullius". A company is dissolved by the forfeiture of its charter legally incurred (C.C., art. 368), but the law provides for the liquidation of its affairs. It is in the same position as a vacant succession (C.C., art. 371), and the creditors and others interested have the same recourse

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against the property which belong to it, as may be exercised against vacant successions and the property belonging to them.

Section 372 of the Civil Code says:

372. In order to facilitate such recourse, a curator, who represents such corporation and is seized of the property which belonged to it, is appointed by the proper court, with the formalities observed in the case of vacant estates.

These sections are applicable in the present case, and are the answer to the objection raised by the appellant, that no redemption can be made on behalf of a company when its charter is forfeited. The legislator has provided for the necessary means to make such a redemption possible.

It follows that the action "en passation de titre" was rightly dismissed by the trial judge, and the present appeal, therefore, should also be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Hackett, Mulvena & Hackett.*

Solicitor for the respondents: *Benoit Marchessault.*

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