

1925
 *Nov. 6.
 *Dec. 10.

MONTREAL ABATTOIRS LIMITED } APPELLANT;
 (PLAINTIFF)

AND

THE CITY OF MONTREAL (DEFEND- } RESPONDENT.
 ANT)

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

*Statute—Municipal corporation—Amount imposed for inspection of
 abattoirs—Tax*

A statute enabling a municipal corporation to "exact and recover from any person * * * operating * * * abattoirs * * * , in order to pay the salary of the health officers appointed * * * to inspect the cattle and other animals slaughtered * * * a sum, etc. * * " provides for the imposition of a tax, and not merely for a right to recover compensation for services when performed.

So far as taxation is concerned, there is no vested right to the continuance of a particular tax or particular apportionment of taxes.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec, reversing the judgment of the Superior Court and maintaining the respondent's plea of compensation.—Appeal dismissed with costs.

The material facts of the case and the questions at issue are fully stated in the judgment now reported.

Geoffrion K.C., *Monty K.C.* and *Angers* for the appellant.

Laurendeau K.C. and *Butler K.C.* for the respondent.

The judgment of the court was delivered by

RINFRET J.—The Montreal Abattoirs Limited brought an action against the city of Montreal for the sum of \$2,333.32 due by virtue of a contract of the 19th June, 1913,

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

for the removal, the incineration and destruction of carrions (charognes), that is to say all dead animals that have not been slaughtered or bled or that may have been slaughtered or bled for the reason that through sickness or otherwise they were in such conditions that they would have died within a short time * * *

The city admitted the claim but set up in compensation *pro tanto* an amount of \$2,000 alleged to be due by the company for a tax imposed by a resolution of the 14th May, 1917.

The company answered in substance that the city had no right to claim this tax because it had not complied with the requirements of section 541 of its charter, under the authority of which such tax was stated to have been imposed, and had not fulfilled the conditions therein expressed or implicitly provided.

The company further submitted that, in exacting this tax, the city was disregarding and violating vested rights of the company.

The judgment in the Superior Court, at Montreal, maintained the contentions of the company; but, upon appeal, this judgment was unanimously reversed, except that, for reasons which will later be considered, one dissenting judge would have allowed compensation to the extent of \$1,000.

Section 541 of the charter of the city of Montreal (as it stood in 1917) read as follows:

541. The city may exact and recover from any person, partnership, corporation or company operating public or private abattoirs situated in or in the vicinity of the city, in order to pay the salary of the health officers appointed by the council to inspect the cattle and other animals slaughtered at any such abattoirs, a sum of not more than one thousand dollars per annum for each public abattoir, and a sum of not more than two hundred dollars per annum for each private abattoir operated by any such person, partnership, corporation or company.

The amounts to be recovered shall be fixed every year by a resolution of the council, on a report of the board of commissioners before the first of July, and shall be payable on the first of September following.

The city proceeded to exercise the authority thus conferred in the following way.

On the 14th May, 1917, the Board of Commissioners passed a resolution

de fixer à \$200 la taxe spéciale à exiger des abattoirs privés et à \$1,000 celle à exiger des abattoirs publics, et de faire rapport au conseil conformément à l'article 541 de la charte.

A report in consequence was submitted to the city council, which, on the 23rd May, approved of it and resolved accordingly.

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The company objects that the city neither appointed health officers to make the inspection of cattle and other animals slaughtered in the company's abattoirs, nor fixed any salary or remuneration for them; that it made no inspection of these abattoirs and consequently it has not, under section 541, the right to exact any amount for a service which it did not render.

The strength of this objection depends entirely on the nature of the imposition contemplated by the section referred to: whether it provides for a tax, or for the bare right to recover a compensation for services.

In our opinion, it provides for a tax.

In construing tax statutes, the substance and not the form is to be considered, so as to carry into effect the legislative intent. (Cooley—Taxation—4th ed. parag. 502). The substance of the enactment in section 541 is that the city may enforce from any abattoir a contribution towards its expenditure for the preservation of public health. It has no relation to the value of the services performed. It does not call for the organization of a special system of supervision. No obligation is placed upon the municipality to visit the abattoirs of the company or any such establishment in particular "situated in or in the vicinity of the city." The motive of the section is not to meet the request or to serve the interest of the company, but to help the city in carrying out a public purpose of prime importance. It is therefore a burden which comes properly under the definition of a tax (Dillon, *Municipal Corporations*, 5th ed., vol. IV, par. 1351; *Les Ecclésiastiques de St. Sulpice v. The City of Montreal* (1)).

It follows that the company cannot object to it on the ground that it receives no direct benefit from the application of its proceeds or that it is not as much benefited as others (Cooley, 4th ed., vol. 1, pars. 20 and 89).

Les revenus de l'état (says Montesquieu (*De l'esprit des lois*, Liv. XIII, c. 1er)) sont une portion que chaque citoyen donne de son bien, pour avoir la sureté de l'autre ou pour en jouir agréablement.

Taxes are sacrifices for the public good (Mill, *Political Economy*, vol. 11, pp. 370, 372) and for their contribution the government or the municipal corporation

renders no return of special benefit to any property, but only secures to

the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. *Illinois Central Ry. v. Decatur* (1).

It is no defence to the collection of a tax that a ratepayer liable for it is not benefited by the expenditure of the proceeds of the tax. The distribution of these proceeds rests in the discretion of the municipal corporation; and if it is unwisely exercised, the remedy is with the electors and not with the court. Moreover, taxes are generally collected in advance of the requirements (and such is the case in Montreal charter, ss. 332 and foll.). The distribution is therefore quite independent of the levy of the tax, and the former cannot affect the validity of the latter (*Cooley*, pars. 89 and 1813).

While, however, these considerations on the legal aspect of the taxing power would be sufficient to defeat the contentions put forward by the company, it was shown in this case that there are, in the city of Montreal, by-laws concerning public health. The city keeps a regular staff of employees and inspectors, whose duties are to carry out the provisions of these by-laws. Their salary is voted every year in the budget; and it is not insignificant to point to the fact that, during the relevant years, the amount spent in that connection was substantially in proportion with the total imposts levied on the abattoirs.

The company further insists that by force of two contracts, to which the city was a party, it must be regarded as exempt from the operation of section 541.

The first contract was made on the 16th January, 1903, with the Montreal Stock Yards Company. It is not lightly to be assumed that the advantages therein conferred by the city, principally in respect of the establishment of a "live stock market for the city of Montreal," enured to the benefit of the appellant, since it purchased only the abattoir business of the Montreal Stock Yards Co. However, it is admitted that this contract concerns solely what is known as the western abattoir. Amongst other stipulations, it provides that

the officials of said city shall at all times be at liberty to inspect the same, the said company also agrees to allow the meat inspectors of the city to inspect the cattle at all times whenever desired before being slaughtered

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as well as to make inspection after the cattle have been slaughtered; the said meat inspector to be paid by the city.

The city does not seek to recover from the company an amount paid to its meat inspector to examine "the cattle brought to the yards of the company." It does not pray for the reimbursement of money spent for the inspection at the company's premises. It claims a tax levied on its abattoirs for public purposes.

There cannot be read into the contract an undertaking on the part of the city not to impose such a tax on the company. This would be tantamount to an exemption from taxation which can there be found neither in clear and unmistakable terms nor by necessary implication from the language used.

But the contract furnishes an additional reply to the contention of the company. The power to exact a charge from abattoirs situated in the city was not delegated to it for the first time in 1916, by the statute 7 Geo. V, c. 60, s. 10. It dates back to 1899, when the present charter of the city of Montreal was granted by the provincial parliament. The only material difference between the section as it was then enacted and the present section 541 lies in the maximum amount of the charge per annum. It was then \$500; by the amendment of 1916, it was increased to \$1,000.

As a result of what has already been said and by force of section 366 of the charter, this charge is a tax. At the date of the contract of 1903, the city had already full authority to levy this tax and, far from contracting itself out of that authority, it carefully avoided to make any express stipulation having the effect of excluding it.

As for the second contract, it is a deed of the 22nd July, 1885, between La Compagnie des Abattoirs de Montréal, The Dominion Abattoirs & Stock Yards Limited, the city of Montreal and l'Union des Abattoirs de Montréal. When this deed was passed, a certain by-law no. 129 was in existence and provided that charges for the slaughtering and dressing of animals at public abattoirs were not to exceed those contained in a subjoined tariff. It is claimed that the parties to this deed took this tariff into consideration when executing it, that they were entitled to rely upon receiving the fees mentioned therein and that the imposition of the tax under section 541 had the effect of reducing these fees and thereby infringes vested rights.

The appellant has certainly not made clear its right to invoke any benefit under the deed in question. Whatever privileges it may have acquired from The Montreal Stock Yards Limited by the contract already considered, it is manifest that the mere holding of a controlling interest, however extensive, in l'Union des Abattoirs de Montréal cannot have the effect of vesting the rights of that company in the appellant. But, moreover, there is in the contract of the 22nd July, 1885, no reference to by-law 129 or to the annexed tariff. The city did not guarantee that it would maintain the charges for slaughtering at the maximum rates fixed in such tariff, still less that it would never do any act of a nature indirectly to affect these rates. So far as taxation is concerned, there is no vested right to the continuance of any particular tax or particular apportionment of taxes. (Cooley, par. 134.) We therefore think that these contracts fail to support the appellant's contentions.

On the whole, the appeal must be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant: *Monty, Duranleau, Ross & Angers.*

Solicitors for the respondent: *Damphousse, Butler & St.-Pierre.*

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