

*Privy Council Appeal No. 60 of 1928.*

The Canadian Spool Cotton Company, Limited - - - *Appellants*

*v.*

The City of Montreal - - - - - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC  
(APPEAL SIDE).

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 16TH OCTOBER, 1928.

---

*Present at the Hearing :*

THE LORD CHANCELLOR.  
VISCOUNT SUMNER.  
LORD WARRINGTON OF CLYFFE.  
LORD ATKIN.  
CHIEF JUSTICE ANGLIN.

[*Delivered by* LORD ATKIN.]

---

This is an appeal from a judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec affirming a judgment of the Recorder of Montreal in an action brought in the Recorder's Court whereby the City of Montreal recovered a sum of \$54,419.56, the arrears of municipal taxes for the years 1918, 1919, 1920, with interest. The appellants' contention was that the property was exempt from taxation by reason of a resolution of the Council of the town of Maisonneuve on the 3rd April, 1907, approving a contract with the appellants' which granted the exemption claimed. The City of Montreal, the successors in title to the town of Maisonneuve in this respect, disputed the validity of the exemption: The Recorder and the Court of King's Bench, following the decision of the majority of the Supreme Court of Canada in the *City of Montreal v. Dupré*, 1924, S.C.R. 246, held the exemption invalid. In effect this is an appeal from the decision of the Supreme Court. At the time of the resolution and contract the appellant company were proposing to establish in the town of Maisonneuve a mill for spinning cotton thread and fine yarns. The exemption was granted on the terms that they should commence to erect the mill within

four months, should spend on the building and plant at least \$200,000, and should employ 200 hands, paying in wages upwards of \$50,000 per annum. The mill was duly erected and the conditions continuously performed. The validity of the exemption depends upon the provisions of Article 4559 of the R.S.Q. of 1888, which governed the transaction at that time. The words of the article are :

“The Council may by a resolution exempt from the payment of municipal taxes for a period not exceeding 20 years any person who carries on any industry, trade or enterprise whatsoever, as well as the land used for such industry, trade or enterprise, or agree with such person for a fixed sum of money payable annually for any period not exceeding 20 years in commutation of all municipal taxes. It may also exempt the poor of the municipality and their property from the payment of municipal taxes. Such exemption or agreement shall not extend to work upon watercourses, boundary ditches, fences or front roads connected with taxable property so exempted or commuted.”

The objection taken to the resolution and the contract is that at the time they came into existence the appellants were not “a person who carries on any industry, trade or enterprise,” inasmuch as they were then only intending to establish their spinning mill.

If the section stood alone their Lordships would not have felt much difficulty in overruling the objection. It appears to them that the words “who carries on any industry” as the words “used for such industry” are phrases qualifying the words “person” and “land” respectively, as of the time at which they will be exempt from taxation which otherwise would fall upon them, and are intended to express the conditions under which the exemption will come into existence and continue to exist. If the words had been “may exempt any trader” as well as “his warehouse,” such a narrow construction as that the validity of the exemption depended upon whether the trader had begun to trade the day before or the day after the promise to exempt him would hardly have been put forward. So far as the power of exemption was given for the purpose of encouraging trade within the municipality, it would seem more probable that the power should extend to prospective traders rather than be confined to those already there.

It is said, however, that if one considers another article in the Revised Statutes of 1888, No. 4642, one will find a statutory provision dealing with exemptions of future manufactories, and one must therefore conclude either that the words in Article 4559 wide enough in their ordinary meaning to entitle a municipality to agree to exempt from taxation a person proposing in the future to carry on any industry, trade, etc., must be cut down so as to confine the power to a person at the time of the resolution in fact carrying on an industry, trade, etc., or at any rate must be so limited in the case of persons proposing to establish a manufactory to which class of persons alone the provisions of Article

4642 apply. The power given by Article 4642 is given to any city, town or village municipality. It is, as has been said, limited to persons proposing to establish a manufactory not being a flour mill, gas works or distillery. The exemption may only be for ten years: a statutory notice with statutory particulars as to the nature of the factory must be given, and the Council must proceed by by-law, which must be brought before the Council at two different meetings. There is no power given to agree in advance to commute annual payments for a fixed sum such as is given by Article 4559.

Considering the different scope of Articles 4642-3, the fact that the powers are given to other authorities additional to those affected by Article 4559, that the exemption is dealing only with manufacturers and not as in Article 4559 with persons exercising any industry, trade or enterprise, and that it does not deal with the power to commute, their Lordships can find nothing in the articles in question so repugnant to the meaning which the words of 4559 would otherwise ordinarily bear as to justify them in coming to the conclusion that reading the Revised Statutes as a whole the words of 4559 should receive a limited construction. Their Lordships think that the effect of the two sections is that so far as manufactories were concerned there were overlapping powers, a result, as Mr. Justice Duff has observed, neither startling nor uncommon.

This view appears to their Lordships to be supported by a consideration of the previous legislation which was reviewed with great care by the learned Judges in the Supreme Court. Taking the view that their Lordships do of the construction of the relevant articles considered only as forming part of the Revised Statutes, it becomes unnecessary to deal at any length with that part of the case. Their Lordships consider it enough to say that they agree with the survey of the previous legislation made by Mr. Justice Duff in the case of the *City of Montreal v. Dupré* (*supra*) and with the conclusions which he draws therefrom. Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed and the judgments of the Courts below set aside and the action dismissed with costs here and below.

In the Privy Council.

---

---

THE CANADIAN SPOOL COTTON COMPANY,  
LIMITED

v.

THE CITY OF MONTREAL.

---

---

DELIVERED BY LORD ATKIN.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1928.