Privy Council Appeal No. 83 of 1931.

The Corporation of the City of Montreal - - - - *Appellants*

v.

The Montreal Industrial Land Company, Limited - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JULY, 1932.

Present at the Hearing:

LORD TOMLIN.
LORD THANKERTON.
LORD MACMILLAN.
LORD WRIGHT.
SIR GEORGE LOWNDES.

[*Delivered by* LORD WRIGHT.]

In this appeal the appellants, the City of Montreal, were defendants in the action and were resisting a claim by the respondents, the plaintiff company, that the Court should set aside an assessment made on them in respect of the cost of certain works of paving executed by the appellants on a road or street called Sherbrooke Street, the respondents being frontagers or bordering owners. The district, in which that street was, had before 1910 formed part of the town of Longue Pointe, but in 1910 that town was annexed by the appellants and included in the City of Montreal, as part of a larger scheme for the enlargement of the City boundaries. To carry out these annexations an Act was passed in 1910 by the Legislature of the Province of Quebec, Statutes of Quebec, 1 Geo. V., c. 48—which amended the charter of the City of Montreal, embodied in Statutes of Quebec, 62 Vict. c. 58 (1899); by Section 1, Sub-section (i) of this amending

Act a number of provisions were enacted relating to the annexation of the town of Longue Pointe, which was to form a ward of the appellant City under the name of Longue Pointe Ward, the City was to do various works of public utility within certain periods, certain privileges were to be granted to the inhabitants and in particular certain streets or highways were to be opened and macadamised, within six months from the date of the sanction of the Act; including Sherbrooke Street. At the date of the Act, the appellant City had general powers under its charter to open up streets, but there were no specific provisions then in force as to charging the frontagers for such work: an Act of 1908 (Statutes of Quebec, 8 Edw. VII, c. 85) by Section 14, had repealed the statutory provisions in Section 455 of the charter, enabling the appellant City in certain events to charge one half of the cost of paving to frontagers. It has been assumed before their Lordships in this appeal and rightly assumed, that the cost of macadamising under the Act of 1910 would come out of the general fund of the appellant City and be borne by the ratepayers generally, without any specific charge being made on the respondents. The appellants did not execute the various works under the Act of 1910 within the statutory period. Accordingly by an Act of 1912 (Statutes of Quebec, 3 Geo. V., c. 54), Section 48, it was provided that "without otherwise amending the charter of the City the latter shall have until the 1st January, 1915, to complete the work it has undertaken to do" by the annexation Act referred to above, which included among many others the works at Longue Pointe: the section added: "and until that date no judicial proceeding by mandamus or otherwise shall be taken or maintained against the City to compel it to execute the said works." Finally, after similar statutory extensions in 1915, 1918, and 1920, it was enacted in 1921 (Statutes of Quebec, 11 Geo. V, c. 111) by Section 10 that the appellant City should not be compelled by mandamus or other legal procedure to fulfil before the 1st May, 1925, the obligations imposed upon it by the Act of annexation of 1910. All these Acts were Acts amending the statutory charter. Meanwhile certain other amendments had been made of the charter with reference to works of paving in the City of Montreal. The first of these was in 1911, and was effected by Section 25 of Statutes of Quebec, 1 Geo. V, c. 60, which so far as material was in the following terms:—

> "The following article is inserted in the Act 62 Victoria, chapter 58, as Article 455:—
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> '455.—1. Notwithstanding any law to the contrary, when the city of Montreal shall decide and order the paving of any street, lane, highway, square or public place, wholly or partly, with permanent materials other than wood and macadam; the total cost of such paving shall be paid by the proprietors of immoveables bordering on such street, lane, highway, square or public place.
>
> 2. A roll shall be prepared for such purpose by the city surveyor, and the total cost of such paving shall be apportioned among such proprietors proportionately to the frontage of their properties as shown on the valuation roll, independently of the buildings thereon erected.'"

Again, in the Act of 1912 already referred to, it was provided by Section 29 as follows :—

> " Article 455 of the Act 62 Victoria, chapter 58, as enacted by the Act 1 George V (2nd Session), chapter 60, section 25, is replaced by the following :—
>
> ' 455.—1. Notwithstanding any law to the contrary, when the board of commissioners shall decide and order by resolution the paving of any street, lane, highway, square or public place, wholly or partly, with permanent materials declared to be such by the said board the total cost of such paving, including the intersection of lanes, shall be paid by the proprietors of immoveables situate on such streets, lanes, highways, squares or public place or part thereof, with the exception, however, of the paving of the intersections of streets which shall be paid by the city out of the loans fund.' "

Again, in 1914, by Section 26 of Statutes of Quebec, 4 Geo. V., c. 73, the following provision was enacted :—

> " Article 455 of the Act 62 Victoria, chapter 58, as enacted by the Act 1 George V (2nd session), chapter 60, section 25 ; and replaced by the Act 3 George V, chapter 54, section 29 ; is replaced by the following :—
>
> ' 455. The city may, by a resolution of the board of commissioners approved by the majority of all members of the council, charge the proprietors the whole or a portion of the cost of permanent pavement, or of pavements which it declares to be permanent, which shall be laid or re-laid in future. To that end it may, by such resolution, impose a tax on each property in front of which such pavement shall be laid or re-laid, either at the rate of a uniform price per square yard of pavement contained in half the width of the street in front of such property, or at the rate of a fixed uniform sum per foot of frontage. Such tax shall be levied and apportioned by means of a roll made out in accordance with the procedure laid down in Article 460, and Articles 456, 457A and 460 shall apply to such rolls. Or it may, by a resolution passed in the same manner, annually impose a special tax on all immoveable properties situate in the city, based on the valuation of the said properties as shown on the valuation roll. Such tax shall be entered in the annual general roll of assessments on immoveable properties.' "

Acting under this last statute, the Council of the appellant City on the 20th July, 1925, resolved to adopt a report and recommendation :—

> ". . . qu'un pavage permanent soit construit sur la rue Sherbrooke, entre les rues Duquesne et Desautels, quartier Mercier, que le coût de ce pavage soit mis à la charge des propriétaires d'immeubles en face desquels il sera fait et que, à cette fin, il soit imposé, sur chaque immeuble en face duquel le dit pavage sera fait, une taxe spéciale foncière répartie au moyen d''un rôle préparé conformément à la loi, au taux fixe et uniforme de $22·57 le pied de front de chacun des dits immeubles, le tout conformément aux dispositions de la charte de la Cité."

The work of paving under the resolution was begun on the 1st May, 1926, and finished on the 22nd December, 1926. The paving so done was different from macadamising : in fact, Sherbrooke Street was never macadamised. There was no evidence that if macadamising had been done, the cost of the paving actually executed (which appears to have been asphalt) would in any way have been reduced. On the 13th December, 1928, the respondents were assessed in the sum of $5,888·04 in respect of

the paving, being at the rate of $5 per square yard. This rate was an arbitrary rate and less than the actual cost, the assessment being made under an Act of 1928, amending the charter of the City of Montreal (Statutes of Quebec, c. 97), which by Section 15 provided that notwithstanding the earlier provisions relating to charging for paving:

> ". . . the cost of pavings laid since the 1st January, 1919, and that of pavings to be laid hereafter on public places, streets or lanes, shall be charged to the bordering proprietors at the uniform price of five dollars per square yard, payable cash or in twenty annual instalments, according to the number of frontage feet of the immoveables belonging to them."

The assessment was objected to by the respondents, who on the 8th February, 1929, brought an action to have the assessment and ancillary proceedings set aside and declared void and illegal. The claim was dismissed by Désaulniers J., the trial Judge, whose judgment was affirmed on appeal by the Court of King's Bench by a majority consisting of Dorion, Tellier, and Bernier, JJ., Howard and Galipeault JJ. dissenting. From these decisions an appeal was taken to the Supreme Court of Canada, which, by a majority, allowed the appeal, reversed the judgments below, and set aside the assessment roll in question: Anglin C.J., Rinfret and Smith JJ. concurred in this decision, Lamont and Cannon JJ. dissenting. From the judgment, the present appeal is brought by special leave.

The appellants' case was primarily rested on the statute of 1928, quoted in part above under which the assessment in question was made. That statute it was argued provided that the cost of pavings laid since the 1st January, 1919 . . . . . on public places streets or lanes should be charged on bordering proprietors at the uniform price of $5 per square yard. What pavings answered this description could be proved by evidence, so that the position was as if the list of actual pavings had been set out seriatim in the section: in that list Sherbrooke Street would have figured and the name of the respondents would have appeared as that of the bordering proprietors: hence the position was the same as if a specific and express enactment had expressly imposed the assessment on the respondents. No doubt the statutory provision is retrospective, but it has not been suggested that the validity of the provision is on that account impaired. Their Lordships think this case is well founded. Mr. Geoffrion for the respondents has argued that the section must be read as limited to pavings lawfully laid, and that the pavings in question were not lawfully laid, and were therefore outside the section so that the assessment on the respondents was bad. He has contended that the pavings were unlawfully laid because the positive enactment in the statute of 1910 placed on the appellant City the obligation to macadamise the street in question, and hence by implication prohibited the appellant City from laying any different kind of paving and therefore from laying the paving actually laid which was admitted to be different from macadam.

He further contended that the later statutory provisions quoted above, which gave the appellant City the power of resolving to lay permanent paving and to charge the frontagers with the cost did not repeal or derogate from the statute of 1910 and were irrelevant for the purposes of this case. Their Lordships do not accept these contentions. It is no doubt true that the statute of 1910 imposed an obligation on the appellant City, which was recognised from time to time by the statutory provisions extending the time for performance : it may be that the obligation represented in fact a bargain between the appellant City and the town which was annexed for the benefit of the town's inhabitants : but however that may be, the obligation was embodied simply in the statute of the province, and the legislature which enacted that statute could repeal or modify it, even though to do so might appear inequitable. The question is whether the later legislation has repealed or modified the obligation. The respondents relied on the principle that *generalia specialibus non derogant :* that is, in this case, to say that the statutes after 1910 were general, referring to all paving done in the whole area of the appellant City, and hence did not derogate from or affect the statutory provisions specially relevant to the specific streets dealt with in the statute of 1910. The rule was thus stated by Lord Hobhouse in giving the opinion of this Board in *Barker* v. *Edgar*, [1898] A.C. 748 at p. 754 : " When the legislature has given its consent to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly." But Lord Hobhouse adds " Each enactment must be construed in that respect according to its own subject matter and its own terms." The principle has often been discussed in many reported cases, with results sometimes in one direction and sometimes in others. In the present case, the various enactments are all amendments of the same statutory charter, and as appears above in certain cases the special enactment is recognised in the same statute as the general enactment. But their Lordships are of opinion that the fair construction on the whole is that the legislature intended to give the appellant City's Council a discretion to pass a resolution to effect permanent paving if in their view it was the proper course to take, instead of macadam, even in the case of streets falling within the statute of 1910, and to do so even though they had not actually macadamised the streets. If the obligation to macadamise had been fulfilled, it could not be contested that under the later enactment the appellant City Council had the right subsequently to remove the macadam and lay the permanent pavement and in doing so avail themselves of the power to charge the frontagers ; and it seems that this right could not be denied merely because the macadam had not been laid at all, if the interests of highway efficiency in the opinion of the Council required the right to be exercised. It is not necessary here to consider whether

or not any persons had any right of action because the macadam was not laid. In effect therefore the obligation to macadamise free of cost to the frontagers was qualified by the right of the appellant City Council to substitute other paving if in their opinion circumstances so required. In this way the various enactments can be read together. Hence, in their Lordships' judgment, the appellant City in paving Sherbrooke Street as they did, were not doing any unlawful act.

But even if the paving were unlawful, their Lordships cannot hold that the act of 1928 would not apply or that the words " pavings laid " could be limited to pavings lawfully laid. There is no saving clause. The words are simply words of positive fact, relating to matters capable of precise identification. If the respondents desired to have the limitation they now claim on these words they ought to have obtained the addition to the statute of apt words of qualification.

In the result their Lordships are of opinion that the appeal succeeds, that the judgment of the Court of King's Bench affirming the judgment of the Trial Judge upholding the assessment as valid should be restored and the respondents should pay the appellants' costs of the appeal and their costs in the Courts below.

They will humbly so advise His Majesty.

In the Privy Council.

THE CORPORATION OF THE CITY OF MONTREAL

v.

THE MONTREAL INDUSTRIAL LAND COMPANY, LIMITED.

DELIVERED BY LORD WRIGHT.

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