Privy Council Appeal No. 63 of 1914.

Alexander Smith - - - - - - - - - *Appellant*

v

The Council of the Rural Municipality of Vermillion Hills, No. 195 - - - - - *Respondent*

and

The Attorney-General for the Province of Saskatchewan and the Attorney-General for the Dominion of Canada - - - - *Interveners*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH JULY, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD ATKINSON.
LORD SHAW.
LORD PARMOOR.

[*Delivered by* VISCOUNT HALDANE.]

This appeal arises out of an action in which the appellant was held liable in the Courts below to pay a sum of $3,118·78, being the amount assessed as tax upon certain lands in the Province of Saskatchewan. The appellant's interest in these lands was conferred by leases from the Crown, granted to him by the Dominion Government, for grazing purposes. The lands were situated within a local improvement district, which was subsequently organised as a municipality under a statute of the province. The tax in question was assessed by this municipality, which was the plaintiff in the action and is the respondent on this appeal.

The only question now raised is whether the appellant could be assessed for the tax, regard being had to section 125 of "The British North America Act, 1867," which provides that "no lands or property belonging to Canada or any province shall be liable to taxation."

The Province of Saskatchewan formed part of the North-West Territory. But it was not organised under section 146 of the Act of 1867, which provides for the admission of that Territory by address to the Crown. It was organised and admitted by an Act of the Dominion Parliament. This Act was itself passed under the powers conferred by "The British North America Act, 1871," which enabled the Parliament of Canada to establish new provinces in any territories forming part of the Dominion, but not included in any of its provinces, and to make provision for the administration, peace, order, and good government of any such new province. The Act of the Dominion Parliament, passed in 1905 in regard to Saskatchewan under these provisions, was the 4 and 5 of Edw. VII, cap. 42, and known as the Saskatchewan Act. This established the part of the North-West Territory to which it related as the Province of Saskatchewan, and provided that the provisions of the British North America Acts, which, of course, included section 125 of the Act of 1867 already referred to, should apply as if Saskatchewan had been an originally united province and set up a constitution for the new province analogous to that of the other provinces. By section 20 it was enacted that as the new province was not to have the public land as a source of revenue, Canada should make certain annual payments to it. By section 21 the Crown lands were to continue to be vested in the Crown and to be administered by the Government of Canada for the purposes of Canada.

It is thus clear that the authorities of the province have no power to tax Crown lands, and the real question is whether this restriction prevents them from imposing the tax in controversy upon a tenant of Crown lands. The appellant was tenant of the parcels of land to which the taxation was directed under two leases from the Dominion Government, for terms of years determinable on notice, and with restrictions on assignment. The leases were granted for grazing purposes. The taxes in controversy were imposed under the provisions of certain statutes of the Legislature of Saskatchewan passed for the purpose of facilitating local improvements and for enabling assessments to that end. Under these statutes districts are to be constituted with Councils. The Council is in each case empowered to impose a tax of restricted amount upon "every owner or occupant in the district for land owned or occupied by him." "Owner" is defined to include any person who has any right, title, or estate whatsoever, or any interest other than that of a mere occupant in any land. "Occupant" is to include the inhabitant occupier of any land, or, if there be no inhabitant occupier, the person entitled to the possession thereof, and the leaseholder or holder under agreement for sale, and any person having or enjoying in any way, or for any purpose whatsoever, the use of land. "Land" includes lands, tenements, and hereditaments, and any estate or interest therein. The secretary of every district is to make an annual

return showing the lands on which the taxes have not been paid, and in case default is proved a Judge of the Supreme Court may make an adjudication, the effect of which is to vest the land, but subject to redemption, in the Crown in right of the province.

The appellant was duly assessed in respect of the land comprised in the two leases, and the question is whether the assessment was valid. It is contended for the appellant that the tax is sought to be imposed on the land itself, which belongs to the Crown in right of Canada, and not on any individual who is interested in it. For the respondent, on the other hand, it is argued that all that is taxed is the interest of the appellant as a tenant of the land and not the land itself as owned by the Crown.

Their Lordships have arrived at the conclusion that the Supreme Court of Canada were right in affirming the judgment of the Supreme Court of Saskatchewan, which adopted the latter of these contentions. Following their decision in the analogous case from Alberta of *The Calgary and Edmonton Land Company* v. *the Attorney-General of Alberta* (45 S.C.R. 170), where the scheme and definitions in the Local Improvement Act of that province were substantially the same as those in the present case, the Supreme Court of Canada held that the taxing statute of Saskatchewan must be read, in accordance with a well-known principle, as not applying to the Crown or its lands. But they thought that there was no reason why it should not be treated as applying to an interest acquired by a private person under a lease from the Crown. The definitions of "land," "owner," and "occupant" make it easy to interpret the expression "land" as excluding any interest which still remains in the Crown. Their Lordships agree with this reasoning. They are of opinion that, although the appellant is sought to be taxed in respect of his occupation of land the fee of which is in the Crown, the operation of the statute imposing the tax is limited to the appellant's own interest. It appears to them that not only can the statute be read as meaning this and no more than this when it uses the word "land," but that it ought to be so read in order to make it consistent with section 125 of the British North America Act of 1867 and not a nullity.

Other points were argued in the Courts below, such as that the province had no power to attach to a person not domiciled within it a personal liability to pay taxes, and that the respondent municipality had not the right to collect the assessments in question, even if they were lawfully imposed. But these other points were not pressed on behalf of the appellant in the argument at their Lordships' Bar, and it is therefore not necessary to deal with them.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed with one set of costs.

The Interveners will bear their own costs.

In the Privy Council.

ALEXANDER SMITH

v.

THE COUNCIL OF THE RURAL MUNICIPALITY OF VERMILLION HILLS, No. 195 (RESPONDENT),

and

THE ATTORNEY-GENERAL FOR THE PROVINCE OF SASKATCHEWAN AND THE ATTORNEY-GENERAL FOR THE DOMINION OF CANADA (INTERVENERS).

DELIVERED BY VISCOUNT HALDANE.

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