

1921

October 20.

BETWEEN

HIS MAJESTY THE KING, ON THE
 INFORMATION OF THE ATTORNEY-
 GENERAL OF CANADA..... } PLAINTIFF;

AND

THE CORPORATION OF THE
 CITY OF THREE RIVERS..... } DEFENDANT.

*Constitutional Law—Dominion Crown—Power of municipality to
 tax—Water Service—B.N.A. Act, Section 125*

The Dominion Crown owned and occupied a Drill Hall in the City of Three Rivers, which was supplied by water from the water works of the city. The city rendered an account for water supplied during 1919, at the rate of 75 cents upon each \$100.00 of valuation of the property, to wit \$86,000.00, being on the basis charged private citizens. The Crown paid under protest, claiming the amount exorbitant, and by its information sought to recover the difference between the amount admitted as fair and reasonable, and that paid.

Held: That, notwithstanding the provisions of section 125 of the B.N.A. Act exempting property of the Dominion from taxation, where in a municipality a system of water works exists, and water is supplied to property of the Dominion Crown, there is an implied obligation upon it to make a fair and reasonable payment therefor, the amount thereof, in absence of agreement, to be fixed by the court on the basis of a fair and reasonable valuation for the water supplied and service rendered.

Minister of Justice for Canada v. The City of Levis [1918] 45 D.L.R. 180; [1919] A.C. 505; 88 L.J.P.C. 33, followed.

2. That the amount payable as aforesaid is not in the nature of a tax; and that therefore the provisions of section 125 of the B.N.A. Act, exempting property of the Dominion from taxation do not apply.

INFORMATION exhibited by the Attorney-General of Canada claiming refund on an amount paid under protest by it for water supplied to the Drill Hall at Three Rivers.

1921
THE KING
v.
THE
CORPORATION
OF THE CITY
OF THREE
RIVERS.

October 5th, 1921.

Case was heard before the Honourable Mr. Justice Audette, at Three Rivers.

Reasons for
Judgment.

Audette J.

A. R. Holden K.C., and *G. G. Heward K.C.*, for plaintiff.

G. Methot for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now (October 20th, 1921) delivered judgment.

This is an information exhibited by the Attorney-General of Canada claiming a refund of \$301.89 on the sum of \$648.75 paid under protest by the Crown as being excessive, for the supply of water to the Drill Hall at Three Rivers, P.Q., during the year 1919.

It is admitted that during the year 1918 the plaintiff was charged and paid for the water supplied by the city to the Drill Hall, at Three Rivers, the sum of \$32.43, upon the basis of 30 cents per 1,000 gallons, under the meter system.

This charge for 1918 appears to be in compliance with sec. 24 of by-law 21, to be found at p. 241 of "La Charte et Règlements de la Cité de Trois Rivières," handed to the court during the trial.

This by-law 21 was amended in 1918 by by-law No. 356 (exhibit No. 7), which in turn was also amended in 1919 by by-law No. 365 (exhibit No. 8) which both came in force on the dates mentioned on the back of the respective exhibits.

1921
 THE KING
 v.
 THE
 CORPORATION
 OF THE CITY
 OF THREE
 RIVERS.
 Reasons for
 Judgment.
 Audette J.

However, for the supply of water for the year (1919), under the amended by-law, the city rendered the Crown the following account, viz.:—"Pour 12 mois d'approvisionnement d'eau, finissant le 1er janvier, 1920, pour le manège militaire, No. 128, rue St. Francois Xavier, suivant evaluation de \$86,000.00 à 75 cents par \$100:—\$648.75 le règlement No. 356 en force le 1er janvier 1919."

The Crown refused to pay this amount of \$648.75. The parties after negotiating having been unable to adjust the matter, the Crown paid the sum claimed under protest, as excessive and as a compulsory payment to avoid the cessation of the supply of water, reserving its rights to have the matter determined by the Courts.

The consideration given by the Crown to the municipality for the use of water from its water supply is not a tax within the exemption and meaning of sec. 125 of the B.N.A. Act and Art. 5729 R.S.P.Q. 1909, as decided by the Judicial Committee of His Majesty's Privy Council in the case of *The Minister of Justice for Canada v. City of Levis* (1).

Moreover, Lord Parmour in delivering the judgment of the Court in that case and summing up the whole matter, says (p. 186): "Their Lordships are therefore of opinion that there is an implied obligation on the respondents to give a water supply to the Government building, provided that, and so long as, the Government of Canada is willing, in consideration of such supply, to *make a fair and reasonable payment*. The case stands outside of the express provisions of the statute, and the rights and obligations of the appellant are derived from the circumstances and from the relative positions of the parties."

(1) [1919] A.C. 505; [1918] 45 D.L.R. 180; 88 L.J.P.C. 33; 35 T.L.R. 113.

Therefore, the only question to be determined in the present case is what is a fair and reasonable price for such a commodity as the water supplied to the Crown under the circumstances.

The price asked by the municipality is based upon the valuation of the Drill Hall at the sum of \$86,000,—a valuation accepted by both parties—and a percentage thereon of 75 cents for every (\$100) hundred dollars of such valuation pursuant to by-law filed as exhibit No. 7 herein, and being the basis of charges also made to the citizens of Three Rivers.

It is obvious that this mode or system of reckoning a rate of charges is not only hypothetical but also arbitrary and inequitable, in that it does not represent in any manner whatsoever, the true or actual quantity and value of the commodity so supplied. Indeed, it is quite clear that a building assessed at \$1,000 might consume three or four times more water than a building assessed at \$10,000,—and that on account of a multitude of reasons. The \$1,000 property may have more taps or outlets, may use more water even with less outlets on account of the special avocation or conduct of its occupants and may even waste more water than the more valuable property did actually use. This system is justified and defended by counsel for the municipality in that, he says, the charge is made in relation to the capacity of the citizen to pay, which would mean that a man of wealth should pay for any commodity,—for his groceries, etc., etc.,—so much more than his neighbour who is a person whose earnings place him in only fair circumstances. This system is clearly inequitable and does not represent a fair and reasonable scale of price for such a commodity.

1921

THE KING
v.
THE
CORPORATION
OF THE CITY
OF THREE
RIVERS.

Reasons for
Judgment.

Audette J.

1921
 THE KING
 v.
 THE
 CORPORATION
 OF THE CITY
 OF THREE
 RIVERS.
 ———
 Reasons for
 Judgment.
 ———
 Audette J.
 ———

In 1918, as already mentioned, the Crown paid under a meter system. Although the municipality did not charge under this system in 1919, the meter was left in the Drill Hall during the whole of such year and duly read by the officers of both parties. From the reckoning of the reading of the meter it has become possible to ascertain pretty accurately the quantity of water supplied to the Crown during the year 1919 at 78,550 gallons, inclusive of the water used for a skating rink, which at 30 cents a 1,000 gallons,—the 1918 rate—would make up a charge of \$23.56½ instead of \$346.86 offered by the Crown and \$648.75 claimed by the city. The sum of \$346.86 would represent a rate of \$4.41 per 1,000 gallons and the sum of \$648.75 a rate of \$8.27 per 1,000 gallons.

No use was made of the Drill Hall during 1919, except for the purpose of the rink, the building being occupied by only four persons.

This offer of \$346.86 made by the Crown w arrived at in the following manner. The Provincial Government owns in the city of Three Rivers the court house building, which is assessed at \$139,000.00 and the jail, assessed at \$60,500.00 for which it respectively pays \$500 and \$300—representing the rate the Federal Crown is also willing to pay.

This charge was made to the Provincial Government under a resolution (Exhibit A) bearing date the 7th April, 1919, wherein, it was, *inter alia*, provided that: “Que l’approvisionnement de l’eau soit fourni aux différentes institutions ci-dessous mentionnées au prix suivant, à compter du 1er juillet, 1918:

“Le Gouvernement de la Province de Quebec paiera \$500 pour le Palais de Justice et \$300 pour la prison, etc., etc.”

The resolution provides also special rates to other institutions.

It was testified at trial, by the clerk of the municipality, that the rate allowed the Provincial Government was arrived at upon representation that the Registry Office, which was formerly in a municipal building, is now installed in the Court House without paying any rent. Be that as it may, such consideration or agreement does not form part of the resolution and the Provincial Government did not enter into any such legal undertaking and could at any time charge for such occupation in the Court House and the municipality would also be at liberty to return to the municipal building if it saw fit.

All of the parties mentioned in the said resolution are charged under a discriminating basis. *The City of Hamilton v. Hamilton Distillery Co.* (1); *The Carleton Woollen Company v. The Town of Woodstock* (2); *The Attorney-General of Canada v. City of Toronto* (3); *Dillon: Municipal Corporation*, Vol. 2, sec. 593; *Langlois v. Parish of St. Rock* (4).

The evidence discloses that, making all due allowances for overhead depreciation, sinking fund, waste, etc., all the water pumped, as well as supplied, cost the city about 12 cents a thousand gallons. The charges made to the Federal Government of \$648.75 would represent a rate of \$8.27 a thousand gallons and the Crown is offering to pay at the rate of \$4.41 a thousand gallons, the same rate as the Provincial Government pays for buildings that consume ever so much more water than the Drill Hall does, as clearly disclosed by the evidence, and a rate which allows an unusually large profit on 12 cents:

(1) [1906] 38 S.C.R. 239.

(2) [1907] 38 S.C.R. 411.

(3) [1892] 23 S.C.R. 514.

(4) [1863] 11 R.J.R.Q. (Mathieu) 398.

1921

THE KING
v.
THE
CORPORATION
OF THE CITY
OF THREE
RIVERS.

Reasons for
Judgment.

Audette J.

1921

THE KING
v.
THE
CORPORATION
OF THE CITY
OF THREE
RIVERS.

Reasons for
Judgment.

Audette J.

There is also in evidence the prices paid for Drill Halls in several other cities with the number of water outlets, which, worth what it may, goes to show that no such excessive prices are paid.

I have come to the conclusion, after duly weighing all the circumstances of the case, that the price offered by the Crown, namely, \$4.41 a thousand gallons or \$346.86 for the water supplied during the year 1919, is, to paraphrase and use the expression in the case of *The Minister of Justice v. City of Levis (ubi supra)*, "a fair and reasonable 'payment' or price for the said commodity."

Therefore, there will be judgment declaring the amount offered as fair and reasonable and that the plaintiff recover from the defendant the sum of \$301.89, the difference between the sum of \$648.75 paid under protest and the said sum of \$346.86 together with interest and costs as prayed.

Judgment accordingly.
