

JUDGMENT OF THE COURT OF QUEEN'S BENCH,

Presenced by the Chief Justice, E. T., 1882, on the subject of Statute Labour on the Lands of Non-Residents.

In Re CANADA COMPANY, vs. J. S. HOWARD,

Treasurer of the United Counties of York, Ontario and Peel.

Rule Nisi issued, ordering the Treasurer to show cause why a mandamus should not issue commanding him to receive from the Canada Company £12 7s. 6d., being the amount of commutation due for statute labour, on the lands of the Canada Company, in these United Counties.

This application is founded on an affidavit of the Commissioner of the Canada Company, stating that the Treasurer has demanded from him £70 11s. 3d. for taxes on the lands of the Company in these three United Counties—that this sum includes £35 5s. 9d., charged against the Company's lands in the several townships of these counties for commutation of statute labour—that this commutation is charged on the value of each separate lot in the respective townships, instead of being charged in the aggregate value of all the lands of the Company in each of the several townships, and that the estate of taxation created thereby amounts to £25 15s. 3d.—that the Treasurer was well aware that the lands so charged belonged to the Canada Company, and made the charge against the Company in respect of them—that he has refused to receive the amount that would be due, if charged upon the aggregate value of the lands in each township, and issues on the commutation tax being paid upon the value of each lot or parcel of land as valued separately.

A similar rule, on the same ground, has been granted to show cause why a mandamus should not issue to the Treasurer of the County of Kent, in order to arrest an alleged overcharge of the same kind.

The question brought up by these applications is, whether, under the Assessment Act, 14 Vic. chap. 67, the lands of a non-resident owning several lots or parcels of lands in a township, are necessarily chargeable, on account of statute labour, with the rate of commutation estimated with reference to the value of each lot or parcel of land separately, as they would be in the case of a resident, a non-resident proprietor owning but one lot of land in the township, or whether the non-resident proprietor having declared himself to be the owner, or being otherwise known by the Treasurer of the County to be the owner of the several lots which may belong to him in any one township, can insist upon their being rated for statute labour, according to the scale laid down in the 32nd clause of the statute, upon an estimate of their aggregate value.

The 7, 8, 9, 17, 20, 23, 28, and 32 clauses are those which bear upon this question, and having considered their language and examined all other parts of the Statute, we think it clear (whatever may be conjectured to have been the intention of the Legislature) that the scale of charge laid down in the 32nd clause, according to which, the assessed resident inhabitants of a township are to be rated to a certain number of days statute labour, increasing with the amount of their assessed property, but with the rate of increase diminishing as the scale of value increases, can only be applied to the case of parties also assessed upon the assessment rolls, in other words, resident proprietors.

In regard to non-resident owners of lands in any township, the act admits of no other course for rating them in respect of Statute labour than by following out the provisions of the 32nd clause, which makes the tax in their case a charge against the several parcels of land which they may own, and not against themselves in respect of their lands. Then each distinct lot or parcel of land being required in such case to be rated by itself according to its value, without regard to the owner, whose name cannot appear on the list. We see no authority for making an aggregate estimate of their value, in consequence of its being shown apart from the assessment roll that they do in fact all belong to one proprietor. They must all be treated, we think, as if they belonged to different proprietors, and must contribute according to the value of each particular lot.

The effect of this will be that if a lot in any one township of the County of York, or in any of six several townships of the County of Middlesex, or six lots in one township of that County, belong to a non-resident proprietor in a certain township is valued at any of the larger sums mentioned in the 32nd clause, that single property will have the benefit of the graduated scale given in that clause, because it is only according to that scale that the charge against the lot can be made, and so the proprietor in such a case gets in effect the benefit of the reduced rate of charge in proportion to the value of the property.

But we see no means, without some officer stepping out of his line of duty, and disregarding the provisions of the act by which the non-resident proprietor can obtain the same benefit in effect in regard to several lots of land which he may own in the same township.

The 23rd and 32nd clauses taken together in connexion with the preceding clauses of the act, seem to preclude the Township or County officers from paying any regard to the consideration of the same absent party having to pay the rate in respect to several lots of land, and on that account altering the rate to which each lot is chargeable under the 32nd clause, the intention of the statute being clear in regard to the lands of non-residents, the charge is to be made on the roll against the land itself and not against the proprietor of whom no mention is to be made or notice taken in the assessment roll.

In our opinion we must discharge the rule with costs. Inconveniences may be suggested that will arise from the statute being construed as we think it must be, looking at the plain significance of its language. One was stated indeed by one of my brethren during the argument. A proprietor of land in one municipality may reside in another, and finding his land likely to be saleable in village lots, may divide 50 or 100 acres accordingly into small lots; if each of these small parcels were rated would be monstrous, and so it might be, and the act in this respect might be found oppressive; but that will not give us power to deny to the language of the statute its plain operation and effect. The Legislature must be looked to for correcting any injudicious provisions.

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