

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of La Cité de Montréal v. Les Ecclesiastiques du Séminaire de St. Sulpice, for special leave to appeal from the Supreme Court of Canada; delivered 27th July 1889.

Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

This is a petition at the instance of the Municipal Corporation of the City of Montreal, for leave to appeal from a judgment of the Supreme Court of Canada, by which the Seminary of St. Sulpice, which is within the boundaries of the city, has been exempted from payment of a sum of \$361 90, about 70l. sterling, being the proportion charged upon it, by the petitioners, of a special assessment made by them for the cost of constructing a main drain which runs in front of its premises. The Supreme Court, by a majority of four to one (Ritchie, C. J., being the dissentient Judge), reversed the decision of the Queen's Bench for Lower Canada, which was also pronounced by a majority of four to one, and restored the judgment of Loranger, J., the Judge of First Instance.

In considering applications of this kind, it is necessary to keep in view that the Statute of

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Canada, 38 Vict., cap. 11, which established the Supreme Court of the Dominion, does not give to unsuccessful litigants a direct right, either absolute or conditional, to appeal from the decisions of that tribunal. Section 47 expressly declares that no appeal shall be brought from any judgment or order of the Supreme Court to any Court established by the Parliament of Great Britain and Ireland by which appeals or petitions to Her Majesty in Council may be ordered to be heard; but saves any right which Her Majesty may be graciously pleased to exercise by virtue of her Royal prerogative.

It is the duty of their Lordships to advise Her Majesty in the exercise of her prerogative, and in the discharge of that duty they are bound to apply their judicial discretion to the particular facts and circumstances of each case as presented to them. In forming an opinion as to the propriety of allowing an appeal, they must necessarily rely to a very great extent upon the statements contained in the petition with regard to the import and effect of the judgment complained of, and the reasons therein alleged for treating it as an exceptional one, and permitting it to be brought under review. Experience has shown that great caution is required in accepting these reasons when they are not fully substantiated, or do not appear to be *prima facie* established by reference to the petitioner's statement of the main facts of the case, and the questions of law to which these give rise. Cases vary so widely in their circumstances that the principles upon which an appeal ought to be allowed do not admit of anything approaching to exhaustive definition. No rule can be laid down which would not necessarily be subject to future qualification, and an attempt to formulate any such rule might therefore prove misleading. In some cases, as

in *Prince v. Gagnon* (8 Ap. Ca., 103), their Lordships have had occasion to indicate certain particulars, the absence of which will have a strong influence in inducing them to advise that leave should not be given, but it by no means follows that leave will be recommended in all cases in which these features occur. A case may be of a substantial character, may involve matter of great public interest, and may raise an important question of law, and yet the judgment from which leave to appeal is sought may appear to be plainly right, or at least to be unattended with sufficient doubt to justify their Lordships in advising Her Majesty to grant leave to appeal.

The exemption which the Supreme Court has sustained in the present instance is a statutory one. The petitioners narrate the 77th section of the Consolidated Statutes of Lower Canada, cap. 15, and then proceed to allege that the effect of the judgment will be "to determine the future liability (meaning apparently non-liability) of buildings set apart for purposes of education, or of religious worship, parsonage houses, and charitable and educational institutions and hospitals, to contribute to local improvements carried out in their interests and for the benefit of their properties." Had that statement been well founded, it might have been an important element in considering whether leave ought to be given. But it is plainly erroneous. The statute in question, which relates to "public education," exempts the properties above enumerated from educational rates levied for the purposes of the Act, and from no other rates.

The clause upon which the judgment of the Supreme Court proceeded is Section 26 of the Statutes of the Province of Quebec, 41 Vict., cap. 6, which is an Act to amend the laws re-

specting public instruction. It enacts that
 " Every educational institution receiving no
 " grant from the Corporation or Municipality in
 " which they are situated, and the land on which
 " they are erected, and its dependencies, shall
 " be exempt from municipal and school taxes,
 " whatever may be the Act or charter under
 " which such taxes are imposed, notwithstanding
 " all provisions to the contrary."

The Seminary of St. Sulpice admittedly does not receive any grant from the Corporation of the City of Montreal, and is therefore within the benefit of the exemption created by Section 6, and the only issue raised between the parties is, Whether a district rate for drainage improvements, levied from that portion of the municipal area which directly benefits by its expenditure, is or is not a municipal tax within the meaning of the clause ?

The petition does not set forth the source from which the petitioners derive their authority to execute such improvements as drainage, and to assess for their cost. Powers of that description are entrusted to municipal bodies, presumably in the interest of the public, and not for the interest of private owners, although the latter may be benefited by their exercise. *Primâ facie*, their Lordships see no reason to suppose that rates levied for improvements of that kind are not municipal taxes, and at the hearing of the petition their impression was confirmed by a reference to the General Municipal Acts for Lower Canada. The Counsel who appeared for the petitioners stated, however, that their powers are derived, not from the General Acts, but from a Charter, the terms of which were neither referred to nor explained. If the terms of the Charter materially differ from those of the General Acts, that deprives the case of any general importance. But it is quite possible

that the concluding words of Section 6 may have been purposely introduced by the Legislature in order to secure uniformity of exemption, whatever might be the terms in which the power to assess was conferred ; and that, consequently, in construing the clause, the expression " municipal taxes " ought to be interpreted according to its general acceptation, and not according to the meaning which it might be held to bear in some Charter or Statutes applicable to particular municipalities.

In these circumstances their Lordships are not prepared to advise Her Majesty that the petitioners ought to have leave to appeal. If such questions are, as they say, of frequent occurrence in the city of Montreal they may have the opportunity of obtaining the decision of this Board in another case, upon appeal from the Court of Queen's Bench for the Province. The petition must therefore be dismissed.

