C
103 Md. 620, 64 A. 52

Court of Appeals of Maryland.
HISS
v.
MAYOR, ETC., OF BALTIMORE.
June 15, 1906.

Appeal from Circuit Court of Baltimore City; J. Upshur Dennis, Judge.

Bill by Henry S. Hiss against the mayor and city council of Baltimore to restrain defendants from levying and collecting taxes at an alleged excessive rate against certain property situated in such city. From a decree dismissing the bill, complainant appeals. Affirmed.

West Headnotes

Taxation 371 ⚿2428
371k2428 Most Cited Cases
(Formerly 371k305)
Annexation Act, § 19 (Acts 1888, p. 127, c. 98), declared that until 1900 the rate of taxation on all "landed property" in certain territory annexed to Baltimore should not exceed the rate for Baltimore county, and that after 1900 the county rate should not be increased for city purposes on "landed property" within the territory until avenues, streets, or alleys shall have been opened or constructed through the same, nor until there shall be on every block of ground so to be formed six dwellings or storehouses ready for occupation. Acts 1902, p. 199, c. 130, § 4a, defined "landed property" to mean real estate, whether improved or unimproved, and until avenues, streets, or alleys shall have been opened, constructed, and improved, shall be construed to mean until avenues, streets, or alleys shall have been opened, graded, curbed, and otherwise improved to full width by some substantial material. Held, that property within the territory annexed to the city by the act of 1888 situated in a block bounded by improved streets, though not containing six dwellings or storehouses, was not "landed property" within such act.

Argued before McSHERRY, C. J., and BRISCOE, BOYD, PAGE, SCHMUCKER, and BURKE, JJ.

John E. Semmes, for appellant.
Edgar Allan Poe, for appellee.

BRISCOE, J.
This is a bill for an injunction to restrain the mayor and city council of Baltimore from levying and collecting taxes for municipal purposes for the year 1905, at a rate in excess of 60 cents per $100 of the assessed value thereof, on certain property situate in that part of Baltimore city formerly Baltimore county, which was annexed to the city under Acts 1888, p. 113, c. 98. A demurer to the bill was sustained and the bill dismissed by the court below, upon the ground that the property in question was not landed property within the meaning of chapter 130, p. 199, Acts 1902, but was liable to taxation at the full city rate after 1900, under section 19, c. 98, p. 127, Acts 1888.

There are two questions thus presented by the record, and the decision of them will depend upon the construction to be given to section 19, c. 98, p. 127, Acts 1888, known as the "Annexation Act," and chapter 130, p. 199, Acts 1902. It will be seen that section 19, p. 127, Acts 1888, provides in part that from and after the year 1900 the property, real and personal, in the territory so annexed shall be liable to taxation and assessment therefor in the same manner and form as similar property within the present limits of the city may be liable, provided, however, that after the year 1900 the present Baltimore county rate of taxation shall not be increased for city purposes on any landed property within the territory, until avenues, streets, or alleys shall have been opened and constructed through the same, nor until there shall be upon every block of ground so to be formed at

least six dwellings or storehouses ready for occupation. And by chapter 130, p. 199, Acts 1902, section 4a was added to the Code of Public Local Laws, and it was provided as follows: "Landed property" shall be construed to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved. "Until avenues, streets, or alleys shall have been opened and constructed" shall be construed to mean until avenues, streets, or alleys shall have been opened, graded, kerbed, and otherwise improved from kerb to kerb by pavement, macadam, gravel, or other substantial material; the words "avenues," "streets," and "alleys," being used interchangeably. "Block of ground" shall be construed to mean an area of ground not exceeding 200,000 superficial square feet, formed and bounded on all sides by intersecting avenues, streets, or alleys opened, graded, kerbed, and otherwise improved from kerb to kerb by pavement, macadam, gravel, or other substantial material, as above provided.

It is admitted that the property involved in this controversy is located within the limits of the territory annexed to the city of Baltimore under what is called the "Annexation Act of 1888," and is situate in a block of ground bounded on the south by North avenue, on the east by St. Paul street, on the north by Twentieth street, and on the west by Charles street, and that the block so bounded contains 120,000 superficial square feet or thereabouts. The bill avers that there is located within the block the following buildings and improvements, to wit: One dwelling house at the northeast corner of ***53** Charles street and North avenue. A fee-simple lot, improved by a one-story factory, fronting on North avenue and extending back to Twentieth street, the property of the appellant. At the northwest corner of St. Paul street and North avenue the Immanuel Baptist Church. At the southwest corner of St. Paul and Twentieth street there is another church. The rear portion is used and occupied as a parsonage. Fronting on Charles street is a one-story, one-room wooden shanty, 16 feet by 10, occupied by a cobbler as a workshop. Between North avenue and Twentieth street there is a three-story dwelling house owned by the American Ice Company, and at the southeast corner of Twentieth and Charles street, there is a lot improved by a shed, used for protecting wood and lumber from rain. The bill further avers that the block of ground is surrounded by streets, avenues, etc., paved, macadamized, etc., or otherwise improved, and inasmuch as it does not, nor ever did, contain six dwellings or storehouses within its boundaries, he is not liable to pay taxes for city purposes at a higher or greater rate than 60 cents per $100 of the assessed value of the property. It is clear, we think, from the facts of this case that the property in question is not landed property, within the meaning of either the "Foutz Act" or the proviso in section 19 of the annexation act of 1888. It is improved city property, similar to other property within the old city limits; and by the express terms of the act, "from and after the year 1900, the property real and personal, in the territory annexed, shall be liable to taxation and assessment, in the same manner and form as similar property within the present limits of the city may be liable." In Sindall v. Baltimore City, 93 Md. 534, 49 Atl. 645, this court held that the term "landed property," as used in the section and in the proviso, meant rural property, as contradistinguished from real estate, which for all practical purposes was city property because actually laid out in city lots on which dwellings were constructed that abutted on proposed or projected streets or subsisting highways to be converted into regular graded streets or avenues. By Acts 1902, p. 199, c. 130, landed property was construed to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved.

We fully agree with the contention of the appellee, as stated in its brief, that this later act

was passed to prevent property which was in no sense city property from being subject to the full city tax rate until certain things were done by the city. It certainly was never intended to affect property which at the time of its passage was not only not landed property, but not even suburban property, but in the fullest sense of the term city property, bounded by the streets, and enjoying every advantage and facility that attaches to similar property within the old city limits. To sustain the appellant's contention in this case would not only give to Acts 1902, p. 199, c. 130, a retroactive effect, but would practically annul and destroy the meaning of the words "similar property" in section 19, c. 98, p. 127, Annexation Act 1888. Chilton v. Brooks, 71 Md. 445, 18 Atl. 868. M. and C. of Balto. v. Rosenthal (Md.) 62 Atl. 579.

We therefore hold in this case that the property in controversy is not landed property, within the act of 1902, but it is improved city property, and is liable to taxation according to the provisions of section 19, c. 98, p. 127, Acts 1888, "as similar property within the limits of the city."

The decree of the circuit court of Baltimore city, dated the 19th day of February, 1906, sustaining the demurrer and dismissing the plaintiff's bill, will be affirmed.

Decree affirmed, with costs.

Md. 1906.
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