C

Court of Appeals of Maryland.
ISAAC HAMBURGER & SONS
v.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE** et al.

Nov. 15, 1907.

Appeal from Superior Court of Baltimore City; Henry Stockbridge, Judge.

Petition in the Baltimore city court by Isaac Hamburger & Sons against the mayor and city council of Baltimore and others, praying that an assessment of improvements made by the appeal tax court be rescinded. From an order reducing the assessment, but adjudging the property liable to assessment, petitioners appeal, and appellees move to dismiss. Dismissed.

West Headnotes

Appeal and Error ⚿842(1)
30k842(1) Most Cited Cases
An order of the Baltimore city court on petition to rescind an assessment of the appeal tax court that "it appearing to the court that the property in question as shown by the evidence was so far completed on the first day of October as to be liable to assessment, and was legally assessed for taxation," does not distinctly present a question of law which alone is reviewable by the Court of Appeals under Baltimore City Charter, § 170, but the proper way to present the question is to submit a prayer or to have the order in such form as would present the question of law passed on.

Appeal and Error ⚿1094(1)
30k1094(1) Most Cited Cases
Baltimore City Charter, § 170, authorizing an appeal to the Court of Appeals, from the determination of the Baltimore city court reviewing a decision of the appeal tax court as to an assessment of property for taxation, and declaring that the Court of Appeals shall hear and determine the questions involved, does not authorize that court to review questions of fact.

Taxation ⚿2174
371k2174 Most Cited Cases
(Formerly 371k65)
Where there was a formal opening of a building on November 1st, two months before the period began for which the taxes were to be paid, and on October 6th the owners began the installation of store fixtures and the amount fixed at which the property was to be assessed had actually been expended by October 1st, notwithstanding there was still some work to be done on the plastering and inside woodwork after that date, such improvements were within an ordinance authorizing the appeal tax court to have assessed for taxation all new improvements finished on or before October 1st, such improvements to be construed as finished when the plastering and inside woodwork were completed; the improvements being within the ordinance if the plastering and inside woodwork were substantially, though not entirely, completed.
***24** Argued before BOYD, PEARCE, SCHMUCKER, BURKE, and ROGERS, JJ.

Joseph N. Ulman, for appellants.

Albert C. Ritchie, for appellees.

BOYD, C. J.

The appellants, as owners of the premises at the northwest corner of Baltimore and Hanover streets, in the city of Baltimore, filed a petition in the Baltimore city court praying that the assessment of the improvements made by the appeal tax court for the year 1907 be rescinded. The petitioners allege that on November 22, 1906, the appeal tax court assessed these improvements for the year 1907 at $180,000, and that said assessment was illegal for the reason that the improvements were not completed on October 1,

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1906, in many important respects, and especially as to the plastering and inside woodwork. They relied on Ordinance No. 170, passed in 1899, by which "the appeal tax court is authorized and directed to have assessed, for taxable purposes, all new improvements finished on or before the first day of October of every year; the said improvements to be construed as finished, when plastering and inside woodwork are completed." Testimony was taken, and, after a hearing in the lower court, an order was passed, as follows: "The above-entitled cause coming on to be heard, and testimony having been given upon behalf of each of the parties, and the cause having been submitted by counsel for the appellant and for the city, and it appearing to the court that the property in question as shown by the evidence was so far completed on the first day of October, 1906, as to be liable to assessment, and was legally assessed for taxation in Baltimore city for the year 1907, but that the amount of such assessment was erroneous, it is thereupon ordered by the Baltimore city court this 15th day of April, 1907, that the assessment on the improvements upon the lot mentioned in the petition in this case be and the same is hereby reduced from the sum of $180,000, to the sum of $150,000." The only exception in the record is thus stated: "To the passing of which order the petitioners excepted, and prayed the court to sign and seal this bill of exceptions, which is accordingly done," etc.

The appellee made a motion to dismiss the appeal, and assigned as reasons therefor: "(1) Because the case involves nothing more than a question of fact, and the Court of Appeals will not review the Baltimore city court's finding upon a question of fact; and (2), even if the appeal did involve a question which the Court of Appeals could pass upon, still such question could not be raised by an exception taken only to the order passed by the lower court." We held in Baltimore City v. Bonaparte, 93 Md. 156, 48 Atl. 735, that it was not the design of section 170 of the city charter (which gives the right of appeal from the appeal tax court to the Baltimore city court and from the latter to this court) to require us to review the findings of fact made by the lower court as to the correctness of the assessment. In that case the appeal tax court revalued certain property owned by Mr. Bonaparte, from which revaluation he took an appeal to the Baltimore city court, which reduced the assessment, and from that action the city appealed to this court, and on motion its appeal was dismissed. There was undoubtedly a question of fact in this case to be determined by the lower court, which this court is not authorized to review--that is to say, whether the property was so far completed on the 1st day of October, 1906, as to be liable to assessment--but there was also a question of law involved, namely, whether under the ordinance referred to these improvements could be assessed for the year 1907, if the plastering and inside woodwork were substantially, but not entirely, completed. The difficulty is that the order appealed from does not specifically pass on the latter question, but simply reduces the assessment from $180,000 to $150,000. It is true that in the recital it is said, "It appearing to the court that the property in question as shown by the evidence was so far completed on the 1st day of October, 1906, as to be liable to assessment, and was legally assessed for taxation," etc., but that would require this court to review that question of fact and does not distinctly present a question of law. We might differ with the court below as to the fact, but under Bonaparte's Case we could not review its finding. The proper way to present the question was to submit a prayer, or to have the order in such form as would properly present the question of law passed on. In Skinner Dry Dock Co. v. Balto. City, 96 Md. 32, 53 Atl. 416, we did pass on a similar question, but there was no motion to dismiss the appeal, and, moreover, that was appeal from an order dismissing the petition, while this order only reduces the assessment. In Balto. City v. Austin, 95 Md. 90, 51 Atl. 824,

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there were 81 appeals in the record. Each petitioner alleged that his membership or seat in the Baltimore Stock Exchange was not assessable for taxation. In 26 of the cases it was alleged that the petitioners were not residents of Baltimore city, and in 12 of them it was alleged that the petitioners were not members of the Exchange. It was said in the opinion filed by Judge Jones that it would be seen that the Baltimore city court was called upon to inquire into and to decide questions both of law and fact; and, after stating that in Bonaparte's Case it was held that mere questions of fact were not reviewable on such appeals, the court said: "Even, therefore, if such questions were presented by the record, which they are not, they would not be here subject to review. Before passing ***25** upon any question of law, we must ascertain from the record what questions are presented for decision. Rule 4 of this court provides that 'in no case shall the Court of Appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the court below.' *** The questions of law in any case arise out of the facts; and that the appellate court may determine whether the law has been correctly applied to the facts there should be bills of exception or agreed statements setting forth the facts and pointing to the questions of law raised upon them." There was no motion to dismiss the appeals, and the court affirmed the judgments below. Other cases might be referred to in which it has been held that this court will not review the mere finding of the lower court, such as McCullough v. Biedler, 66 Md. 283, 7 Atl. 454, Tyson v. Weston Nat. Bank, 77 Md. 412, 26 Atl. 520, 23 L. R. A. 161, New & Sons v. Taylor, 82 Md. 40, 33 Atl. 435, and Muir v. Beauchamp, 91 Md. 650, 47 Atl. 821, but we will not discuss them. In a case like this, where it is desired to have the court construe an ordinance and determine its legal effect, it must be brought before us by an exception to the ruling of the lower court on a prayer or admissibility of evidence or by demurrer, or in some way plainly presenting a question or questions of law, and it cannot be by an exception to an order such as this. The appeal must therefore be dismissed.

As the question argued is one of importance, and one in which the public is concerned, we will briefly state our conclusion on the merits of the case. We are of the opinion that the ordinance must be construed to mean that new improvements are to be assessed when the plastering and inside woodwork are substantially completed by October 1st, and that this record shows they were in this instance. There was a formal opening of the building on November 1, 1906, two months before the period began for which the taxes were to be paid, and on October 6th the appellants began the installation of the store fixtures, although the building was not then entirely completed. One hundred and fifty thousand dollars (the amount fixed by the court at which the property was to be assessed) had actually been expended by October 1st, and, while there was still some work to be done on the plastering and inside woodwork on and after that date, it was not of a character to justify us in holding that it was not completed within the meaning of the ordinance. The principle applied in Skinner Dry Dock Co. v. Balto. City, supra, is applicable here, and, if this appeal was properly before us, we would not hesitate to affirm the action of the lower court.

Appeal dismissed, the appellants to pay the costs.

106 Md. 479, 68 A. 23

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