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Court of Appeals of Maryland.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE**
v.
GAIL et al.

Dec. 4, 1907.

Appeal from the Circuit Court of Baltimore City; Thos. Ireland Elliott, Judge.

Action by George W. Gail and others, as trustees under the will of George W. Gail, deceased, against the mayor and city council of Baltimore for a mandatory injunction directing the defendant to vacate certain tax rolls to a certain extent, and for an injunction against defendant from collecting taxes for municipal purposes on certain lots at a certain rate. From a decree for plaintiffs, defendant appeals. Affirmed in part, reversed in part, and remanded.

West Headnotes

Municipal Corporations ⚿956(2)
268k956(2) Most Cited Cases
Acts 1888, p. 127, c. 98, § 19, provides after the year 1900 the Baltimore county rate of taxation at the time of the passage of the act shall not be increased for city purposes on any landed property within the annex 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 at least six dwellings or warehouses ready for occupation. Acts 1902, p. 199, c. 120, defines "landed property" to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved. Held, that a wholly unimproved lot bound by a street or alley on two of its four sides and contiguous to a 28-acre tract of land with no visible boundary separating it from such tract was landed property within the meaning of the acts, and hence not subject to the Baltimore city rate of taxation until it had reached the standard of development required by the act to make it urban property.

Municipal Corporations ⚿956(2)
268k956(2) Most Cited Cases
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Municipal Corporations ⚿956(2)
268k956(2) Most Cited Cases
Acts 1888, p. 127, c. 98, § 19, provides that after 1900 the property, real and personal, located in the annex to the city of Baltimore shall be liable to taxation in the same manner as similar property within the limits of the city at the time of the passage of the act, provided that after the year 1900 the present Baltimore rate of taxation shall not be increased for such purposes on any 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 at least six dwellings or warehouses ready for occupation.

Held that, when property within the annex reached the required standard of development, the appeal tax court had jurisdiction after the year 1900 to relist and classify such property according to the full Baltimore city rate.

Municipal Corporations 956(2)
268k956(2) Most Cited Cases
Section 19 of the act annexing certain territory to Baltimore city (Acts 1888, p. 127, c. 98) declares that until the year 1900 the right of taxation on all "landed property" in the territory annexed shall not exceed the rate for Baltimore county; that from the year 1900 "the property, real and personal," shall be liable to taxation as property within the city's old limits, provided that after the year 1900 the Baltimore county rate of taxation at the time of the passage of the act shall not be increased for such purposes "on any landed property within the city 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." Acts 1902, p. 199, c. 130, amendatory of annexation act, defines "landed property" as real estate, whether in fee simple or leasehold, and whether improved or unimproved, and provides that "until avenues, streets, or alleys shall have been opened and constructed" shall be construed to mean until avenues, streets, or alleys shall be opened, graded, curbed, and otherwise improved from curb to curb by pavement or other substantial material. It also provides that the words "avenues," "streets," and "alleys" are used interchangeably, and that "block of ground" shall be construed to mean an area not exceeding 200,000 superficial square feet, formed and bounded on all sides by intersecting improved avenues, streets, or alleys. Held, that the effect of the amendatory act was to retain the county rate of taxation in the annexed territory until landed property therein situated became urban property within the terms of the act.

Municipal Corporations 956(2)
268k956(2) Most Cited Cases
Section 19, c. 98, p. 127, Acts 1888, extending the limits of Baltimore city by including parts of Baltimore county, provided that after the year 1900 the Baltimore county rate of taxation at the time of the passage of the act should not be increased for city purposes on any landed property within the territory annexed until avenues, streets, or alleys should have been opened and constructed through the same, nor until there should be upon every block of ground so to be formed at least six dwellings or storehouses ready for occupation. Held, that the provision was not invalid as partially exempting certain persons from contributing their proportion of public taxes according to the value of their property.

Municipal Corporations 956(2)
268k956(2) Most Cited Cases
Under Acts 1888, p. 113, c. 98, as amended by Acts 1902, p. 199, c. 130, extending the limits of Baltimore city by including parts of Baltimore county, and expressly prescribing the conditions under which the full city tax rate may be imposed upon the property annexed, such rate may be imposed only upon the conditions expressed in the act.

Municipal Corporations 956(2)
268k956(2) Most Cited Cases
Section 19, c. 98, p. 127, Acts 1888, extending the limits of Baltimore city by including parts of Baltimore county, provided that after the year 1900 the property, real and personal, in the territory annexed should be liable to taxation in the same manner and form as "similar" property within the limits of the city at the time of the passage of the act. Held, that the section, in the absence of any proviso limiting its operation, would render all property, real and personal, in the annexed territory, liable to taxation at the full city rate in the same manner as other real and personal property in the city; the word "similar"

not referring to property improved in any particular way or located in any particular locality in the city, but to real and personal property within the limits of the city.

Taxation 2875
371k2875 Most Cited Cases
(Formerly 371k608(1))
A court of equity has jurisdiction to restrain the collection of a tax attempted to be levied and collected illegally.
***283** Argued before BRISCOOE, SCHMUCKER, BOYD, and BURKE, JJ.

Edgar Allan Poe, for appellant.

W. Burns Trundle, for appellees.

BURKE, J.

The appellees, as trustees under the will of George W. Gail, deceased, are the owners of two lots of ground situated within the territory annexed to Baltimore city under Acts 1888, p. 113, c. 98. These lots will be designated in this opinion as "lot No. 1" and "lot No. 2." Lot No. 1 fronts about 600 feet on Eutaw Place, 300 feet on Whitelock street, about 600 feet on Linden avenue, and 300 feet on Ducatel street. It is improved by two dwellings, a stable and carriage house combined, a greenhouse for the culture of flowers, and a chicken house for raising chickens. The lot is not divided by either streets or alleys opened or unopened and about one-third of the lot is used as a vegetable garden, and a large part of the remainder is set out in shade and fruit trees and shrubbery. This property was the residence of the late Mr. Gail, and is in precisely the same condition now as it was at the time of the adoption of the annexation act, except that a conservatory has since been added. The streets surrounding this property are public highways of the city--paved, graded, and curbed, except Linden avenue, which is not entirely paved between Ducatel street and Whitelock street. It is located in a residential section, and the whole neighborhood immediately surrounding it is well built up and well improved. The property has the advantage of lighted streets at the expense of the city, and of police and fire protection, and is supplied with water furnished by the city, which must, however, be paid for by those who use it. Lot No. 2 fronts on Eutaw Place, and is wholly unimproved. It runs back from Eutaw Place to Jordan alley. It has no street or alley bounding it on its southeastern side, and on its northwest side it is contiguous to a large parcel of land, called "Cloverdale," containing ***284** about 28 acres, and there is no physical boundary separating the two properties. Lot No. 2 is in the same condition now as it was when the act of 1888 became operative. Down to and including the year 1906 both lots have been taxed for municipal purposes at the 60 cent rate. But the appeal tax court of Baltimore city, after due notice to the owners, listed or classified the property at the full city rate for the year 1907. They determined that under section 19, p. 127, c. 98, Acts 1888, as amended by the Acts 1902, p. 199, c. 130, both lots were subject to the full city rate of taxation, and thereupon the mayor and city council of Baltimore levied taxes for municipal purposes upon these lots for the year 1907 at the rate of $1.97 1/2 on each $100 of the assessed value thereof; that being the full city rate for that year. The bill in this case was then filed, and the relief prayed for was twofold: First, for a mandatory injunction directing the defendant to vacate said tax rolls to the extent that said property is taxed thereon for municipal purposes for the year 1907 at a greater rate than 60 cents on the $100 of its assessed value; second, for an injunction enjoining and restraining the defendant from collecting or attempting to collect taxes for municipal purposes for the year 1907 on said lots at a greater rate than 60 cents on the $100 on the assessed value thereof. The lower court, after hearing, passed a decree enjoining and directing the defendants to vacate upon its tax rolls the taxes levied upon the two parcels of land, for

municipal purposes for the year 1907, in excess of the rate of 60 cents upon the $100 of the assessed value thereof; and enjoining and strictly prohibiting the defendant, its officers, agents, and attorneys from collecting, or attempting to collect, taxes thereon for municipal purposes for the year 1907 at a greater rate than 60 cents on the $100 of their assessed value. From this decree the city has appealed.

The acts above mentioned have been considered by this court in a number of cases, but in none of them has the court evinced the slightest purpose to weaken the force, or narrow the scope, of their provision. In all cases to which they are applicable both the city and the taxpayer of the annex will be held to a compliance with their requirements. Acts 1888, p. 113, c. 98, as amended by Acts 1902, p. 199, c. 130, prescribes the conditions under which the full city rate may be imposed, and it can only be imposed upon the conditions therein expressed. It would be not only a hardship upon the taxpayer of the annex to impose that rate upon other and different conditions, but to do so would be an unwarranted exercise of the taxing power by the city. Section 19, p. 127, c. 98, Acts 1888, declares: "That from and after the year 1900, the property, real and personal, in the territory so annexed, shall be liable to taxation therefor, in the same manner and form as similar property within the present limits of said city may be liable." The word "similar," as used in this clause of the section, does not refer to property improved in any particular way, or located in any particular locality in the city. It has reference to real and personal property within the then limits of the city, and, had there been no proviso added to this section, the clause quoted would have indicated clearly the intention of the Legislature to be that, after the year 1900, all property in the annex, real and personal, should be liable to taxation at the full city rate in the same manner and form as other real and personal property in the city. As a great part of the land annexed was vacant, unimproved, rural property, it would have been unjust to have subjected it to the payment of the full city rate, and accordingly the following proviso was incorporated in section 19: "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 said 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 (6) dwellings, or store houses ready for occupation." The validity of this partial exemption was sustained by this court in Daly v. Morgan, 69 Md. 460, 16 Atl. 287, 1 L. R. A. 757, in which the object of this proviso, as well as the kind of property to which it applied, were stated by Judge Robinson: "The larger part of the territory annexed under the act of 1888 embraces vacant outlying lots and farming lands, and the plainest principles of justice would seem to require a qualified exemption of such property for a limited period at least from the heavy burden of city taxation. It must be some time before such property can be available for building or business purposes, or can enjoy the full benefits and privileges of the city government. And if local taxation is founded on, or in any manner qualified by, the principle of local benefits, there ought to be in all fairness some apportionment in the rate of taxation between such property and property more advantageously located."

What was the meaning of "landed property," as that term was employed in the act of 1888, and what were the exact conditions under which the full city rate might be imposed, were more certainly defined and specifically stated in the case of Sindall v. Baltimore City, 93 Md. 526, 49 Atl. 645. "It must be borne in mind," said the court, speaking through its late Chief Justice, "that at the date of the adoption of the annexation act a large part of the added territory was unimproved, outlying, rural land. It would have been

manifestly unjust to have subjected such property to the same valuation and to the same rate of taxation as then obtained in the city with respect to distinctively urban property. Accordingly the nineteenth section ***285** specifically provided that 'until the year 1900 the rate of taxation for city purposes upon all landed property' within the annexed territory and 'upon all personal property' in the same territory shall at no time exceed the present rate of Baltimore county." Thus both "landed" and personal property were made liable to the county rate of 60 cents on the $100 until the year 1900. But the section proceeds: "From and after the year nineteen hundred the property, real and personal" in the annexed territory "shall be liable to taxation and assessment therefore in the same manner and form as similar property within the present limits of said city may be liable." Here are two definite things declared: First, that until 1900 the landed and personal property shall be assessed and taxed at the county rate existing when the act of 1888 went into effect; secondly, that from and after the year 1900 "the property, real and personal," shall be assessed in the same manner and form, and shall be liable to taxation in the same manner and form as similar property within the city's old limits might be liable. Now, if there had been no proviso, it is perfectly clear that all property, real and personal, whether unimproved land, "landed property," or land laid out in lots and improved with dwellings or places of business, would have been liable "from and after the year 1900" to precisely the same rate of taxation as unimproved land, or lots with houses or business places thereon within the old limits, were liable. To make that result certain beyond cavil the term "landed property," used in the beginning of the section, was dropped when the Legislature came to describe what kind of property was to be subjected to taxation at current city rates from and after the year 1900, and the phrase, "property, real and personal," was substituted. But it was, no doubt, considered probable that there might be considerable "landed property" still unimproved even after the year 1900; and to meet that contingency the proviso was added. By the terms of that proviso the antecedent broad provision, subjecting after the year 1900 all property in the belt, "real and personal," to the same rate of taxation to which similar property in the city might be liable, was suspended as to "landed property not comprised in blocks included within avenues, streets, or alleys and not improved by at least six houses. Thus it is obvious that, whilst the body of the section subjected all real estate within the belt to current city rate from and after the year 1900, the proviso created an exemption from that imposition in favor of landed property which could not be strictly classed as city property because not built upon and not situated within a block formed by city streets or avenues." After thus defining the term "landed property," as used in the act, he states the two conditions under which the full city rate might be imposed upon annexed property: "First, when the 'landed property' has been divided into lots and compactly built on with a view to fronting on a street not yet constructed, but contemplated by the persons who projected or built with reference to it, though the municipality has not opened such street or accepted a dedication of it; secondly, when though still 'landed property'--that is, rural property--in the sense it has not been divided into lots and has not been compactly built on, it is intersected by opened and constructed streets, opened and constructed by or in conformity with municipal authority, which streets form blocks, and upon which blocks there are at least six houses. In the second instance, though the residue of the block be unimproved or be not laid out in lots, the whole block will be liable to be taxed at the current city rate, as soon as six houses are erected on it."

The Sindall Case was decided in June 1901, and in April, 1902, the Foutz act was passed, by which the terms used in the act of 1888 were defined, and other and different conditions prescribed as

conditions precedent to the taxation of landed property in the annex at the full city rate. The act provides, first, that the terms "landed property," "until avenues," streets or alleys shall have been opened and constructed, and "block of ground," as used in the preceding section, shall be construed as follows: (a) "Landed property" shall be construed to mean real estate, whether in fee simple or leasehold, and whether improved or unimproved; (b) "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, curbed, and otherwise improved from curb to curb by pavement, macadam, gravel, or other substantial material; (c) the words "avenues," "streets," and "alleys" being herein used interchangeably; secondly, "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, curbed, and otherwise improved from curb to curb by pavement, macadam, gravel, or other substantial material as above provided. We said in Joesting v. Baltimore, 97 Md. 592, 55 Atl. 457, that the effect of this act "is to retain the 60 cent rate in the belt until landed property there situated becomes urban property, within the meaning of the terms employed in that act." Judge Boyd, speaking of this act in Baltimore v. Rosenthal, 102 Md. 306, 62 Atl. 579, said: "This court having in effect said in Sindall's Case that, under the act of 1888, it was not necessary that the beds of the avenues, streets, or alleys be improved in order to make the houses and lots fronting thereon liable to the city rate of taxation, the act of 1902 was intended to so amend the statute as to require the avenue, street, or alley to be improved as mentioned in the act." The relief prayed for ***286** in this bill is asked upon two grounds: First, want of power in the appeal tax court of Baltimore city to classify the property; secondly, want of power in the defendant, the mayor and city council of Baltimore, to levy the full city rate for the year 1907 upon the property. This court in Sams et al. v. Fisher et al., 66 Atl. 711 (decided May 15, 1907), distinctly held that the appeal tax court of Baltimore city has the power, under the provisions of the acts of 1888 and 1902, to take property situated in the annex, and which has become subject to taxation at the full city rate, out of the list of property subject to the 60-cent rate, and to list or classify it at the full city rate. In that case, it was not claimed that the property in question was not subject to taxation at the full city rate under the act of 1902. But, if this property is landed property, within the meaning of the act of 1902, it follows from what we have already said that it is not liable to the full city rate, because the conditions prescribed by that act do not exist, and therefore the defendant had no power to impose that rate. But in our opinion neither the act of 1888 nor the act of 1902 applies to lot No. 1. This lot is not landed property within the meaning of either of those acts. It is in the fullest sense urban property, situated in a highly improved and desirable residential section of the city, and enjoys all the advantages and privileges of highly favored city property. There is no reason why such property should be exempt from the full city tax rate, and it certainly was not within the contemplation of the Legislature that such property should enjoy the partial exemption conferred by the act.

The question arising upon the taxation of lot No. 1 is controlled and settled by the principle of the decision in the case of Hiss v. Baltimore City, 103 Md. 620, 64 Atl. 52. Under the decisions of this court in Daly v. Morgan and Sindall v. Baltimore, supra, lot No. 2 would be held to be landed property, but that this lot, under the act of 1902, is landed property, does not appear to admit of a doubt, and, therefore, it cannot be taxed at the full city rate until the conditions prescribed by that act have been gratified.

2. Having determined that the levy of the full city

rate upon lot No. 2 was beyond the power of the defendant, its act was therefore ultra vires and void. The only question remaining is: Has a court of equity jurisdiction to restrain the collection of a tax attempted to be levied and collected illegally? By the unbroken current of judicial decisions in this state and elsewhere this general jurisdiction has been sustained. It was sustained by this court in Joesting v. Baltimore, 97 Md. 589, 55 Atl. 456, in an able opinion delivered by Chief Justice McSherry, in which the reasons in support of that jurisdiction are stated with convincing force. But it is supposed that this court in Sams v. Fisher. supra, has changed the settled law declared in Joesting v. Baltimore. This is an entire misapprehension. The only question before the court in Sams v. Fisher was the power of the appeal tax court of Baltimore city to classify annexed property. The jurisdiction of a court of equity to restrain the levy and the collection of a void or illegal tax was not involved in that case. We therefore decide that lot No. 1 is subject to the imposition of the full city rate for the year 1907, and lot No. 2 is subject only for the year 1907 to the limited 60-cent rate.

The decree will be reversed in part, and affirmed in part, and the cause remanded that a new decree may be passed in conformity to this opinion.

Decree reversed in part and affirmed in part, and cause remanded, that a new decree may be passed in conformity to this opinion, each party to pay one-half of the costs in this court.

106 Md. 684, 68 A. 282

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