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93 Md. 156, 48 A. 735

Court of Appeals of Maryland.
MAYOR, ETC., OF CITY OF BALTIMORE et al.
v.
BONAPARTE.
March 8, 1901.

Appeal from Baltimore city court; Henry Stockbridge, Judge.

"To be officially reported."

Appeal by Charles J. Bonaparte from the action of the appeal tax court revaluing certain property. From a reduction of the assessment the mayor and city council of Baltimore and others appeal. Dismissed.

West Headnotes

Constitutional Law 92 ⚿67
92k67 Most Cited Cases
The Legislature cannot impose on the Court of Appeals the duty of making valuations for taxation, that not being a judicial duty.

Constitutional Law 92 ⚿74
92k74 Most Cited Cases
Under Baltimore City Charter, § 170, providing that the determination of the Baltimore city court refusing a decision of the appeal tax court as to the revaluation of the property may be appealed to the court of appeals, and that the latter court shall hear and determine the question involved in the appeal, where the city appeals from a decision of the city court, the only question involved being the propriety of the amount of the valuation, the question cannot be reviewed, as such court can only be required to discharge its official duties, and hence cannot be directed by the general assembly to sit in judgment on such a valuation, because such a valuation is not the result of the exercise of any judicial duty.

Appeal and Error 30 ⚿1094(1)
30k1094(1) Most Cited Cases
The finding of an intermediate Appellate Court on a controverted question of fact is binding on further appeal.

Argued before McSHERRY, C.J., and PAGE, PEARCE, FOWLER, and SCHMUCKER, JJ.

Wm. Pinkney Whyte and Charles W. Field, for appellants.
Charles J. Bonaparte, pro se.

McSHERRY, C.J.
This is an appeal from the Baltimore city court A motion has been made to dismiss the appeal, and that motion presents an entirely new question for decision. Under the local law of Baltimore city the appeal tax court is given authority to assess and value property for purposes of taxation, and to increase valuations previously made. Acting under that authority, the appeal tax court revalued certain property situated in Baltimore city, and owned by Mr. Charles J. Bonaparte. From that revaluation Mr. Bonaparte took an appeal to the Baltimore city court, as section 170 of the city charter provides that he might do. Upon the trial of the appeal the assessment was reduced, and from that action of the city court the mayor and city council have appealed to this court.

The provision of section 170 under which the record was brought into this court reads as follows: "An appeal may be taken to the court of appeals by either the petitioner or petitioners or the city within ten days after the rendition of said judgment or order by the Baltimore city court, and the record shall be immediately transmitted to the court of appeals, which court shall immediately hear and determine the questions involved in said appeal." Mr. Bonaparte has filed a motion to dismiss the appeal on the ground that section 170 does not warrant or permit, and was not designed to allow, an appeal to this court when there is nothing to be considered but the correctness or the

incorrectness of the amount of the valuation. This section of the city charter has not heretofore been before us for interpretation, and we will now proceed to consider whether there is any question presented which we are charged with the duty to review. No decision of the lower court on a legal proposition is involved; that is to say, there is no bill of exceptions in the record containing any ruling of that court on the admissibility of evidence or on prayers for instructions. The single question presented is one of fact, viz. has this particular property been accurately valued for purposes of taxation? Have we power, or did the statute intend to give us power, or to require us, to review such a finding of fact made by the court below on appeal to it from the appeal tax court? The city court is a court of law, and exercises no equity jurisdiction. On an appeal to that court from the appeal tax court the city court sits, under section 170 of the city charter, without the intervention of a jury, to "ascertain or decide on the proper assessment" of property in respect to which the owner is chargeable with taxes. From that ascertainment or decision an appeal is allowed to this court, and this court is required to "hear and determine," not the question as to whether the valuation made by the city court was right, but "the questions involved in said appeal." Now, what are the questions always involved, and which alone can be involved, in an appeal to this court from a court of law? Did the legislature intend to enlarge the jurisdiction of this court by conferring on it authority to hear and decide in such cases as this questions of fact? As reflecting on what the legislature intended to do, we will ascertain whether it could require the appellate court to act as a final board of review and revaluation in the assessment of property for purposes of taxation. We know of no instance in which an appeal from a court of law to this court will bring up for review a naked question of fact, when the court from which the appeal was taken had acted in the exercise of its ordinary jurisdiction as a court of law. It is true, when motions to strike out judgments have been overruled, or when judgments have been set aside after the expiration of a term, the facts upon which the lower court acted are reviewable here if properly brought before us. But in these cases the trial court acts, and its decisions, which are open for review on appeal, are rendered, in the exercise of an equitable, as contradistinguished from its ordinary, jurisdiction as a court of law. So, too, in the special instances where an appeal is provided ***736** by statute in registration cases,-cases where the right of a citizen to vote is at issue,-this court examines the facts because the right to vote depends on residence, and what constitutes residence is always, when a question at all, a question of mixed fact and law. There is no analogy between these proceedings and the one at bar. If the valuation of which the city complains in this case had been made in the city court by a jury, instead of by the judges sitting without a jury, it cannot be pretended that this court could consider the evidence on which the verdict was founded with a view to overrule or vary the result reached by the jury. If this be so,-and it cannot be questioned,-upon what principle can it be said, because the finding was by a judge, and not by a jury, that we may examine the evidence adduced below, and affirm or reverse or modify the conclusion of fact reached by the judge? The agency employed in the court below to ascertain the taxable valuation of this property can in no known way be a measure of this court's authority to pass upon an issue of fact when the record is brought into this court on appeal. The mere fact that the valuation was made by a judge instead of by a jury cannot give jurisdiction to review here the findings below if, independently of that mere fact, no such jurisdiction exists. About this there ought to be no doubt. When a case has been tried by a court without the intervention of a jury, it has always been held that the facts could not be reviewed in this court to any greater or other extent than if they had been found by a jury. Thus, in Tinges v. Moale, 25 Md. 480, there was an

effort to have this court review a finding of fact made by the court of common pleas in a cause heard by it without the aid of a jury, but the attempt was unsuccessful. Our predecessors said: "With the facts as found by the court below, upon such a submission this court has no more to do upon appeal than if they had been found by a jury. It is only upon the law arising upon facts as admitted by the pleadings, or agreed by the parties, or found or to be found by the jury (or by the court when substituted for the jury), and raised in the modes adopted in our practice, that this court has to deal in appeals from judgments of courts of law. *** In this case we cannot examine the facts in evidence in the bill of exceptions with a view to adjudge whether the finding by the court was or was not correct. As to that branch of the case, no appeal lies, and we entertain none. If a question of law has been raised upon them below for decision, and that appears from the record, it is our duty to examine and pronounce upon it." Though this was said in a case which originated in the court of common pleas, we see no reason why it should not be applicable to a case which reached the Baltimore city court by an appeal from the appeal tax court. When, therefore, the legislature provided for an appeal from the city court in the class of cases to which the one before us belongs, it must be understood that it was intended that only such questions should be considered here as could be passed on in the then existing state of the law when any other appeal was taken from the judgment of a court of law in a case where the facts had been found by a judge, and not by a jury. Hence it is obvious that we must look beyond the circumstance that the city court is required to act without the aid of a jury for an indication that this court was intended by the legislature to review a mere question of fact, for that circumstance tends to the opposite conclusion; and when we do look beyond that circumstance we find nothing but the requirement that we shall hear and determine the questions involved in the appeal. There is no declaration by the legislature that a naked question of fact shall be a question involved in the appeal. There is no statement that any other question than such as ordinarily and generally arises on an appeal from a court of law shall be a question involved in the appeal to this court. As no question of fact, pure and simple, is ever a question involved in an appeal to this court from a court of law, it must be presumed that the legislature did not design, under section 170, to make a radical departure from existing methods of procedure, and did not, therefore, intend that the "questions involved in said appeal" should include such a question of fact as this record presents.

In further support of this conclusion reference may be made to a somewhat similar class of cases for which section 179 of the city charter makes provision. By that section an appeal is allowed to the Baltimore city court from assessments of damages and benefits caused by the condemnation and opening of any public highway in the city. Upon a trial of such an appeal in that court the persons appealing are secured the right of a jury trial "to try any question of fact, and, if necessary, to view any property in the city, or adjacent thereto, to ascertain and decide on the amount of damages or benefits under the direction of the court." The court is given power to "increase or reduce the amount of damages and benefits assessed, and [to] alter, modify, and correct the" return of proceedings of the commissioners for opening streets; and the court "shall cause the proceedings and decisions on said returns and appeals to be entered in the book containing the record of the proceedings of the commissioners, *** which shall be final and conclusive in every respect, unless an appeal be taken to the court of appeals." Now, it never has been supposed that this court, in hearing such an appeal from the Baltimore city court, could review the findings of fact reached by the jury. The appellate court's jurisdiction has always been confined to the consideration of questions of law arising in the

court below and ***737** brought here by bill of exception; and no reason can be suggested for holding that appeals relating to valuations for taxation, taken from the city court when sitting without a jury, should open up an inquiry of fact to be decided here, while appeals relating to valuations for opening streets, and taken from the same court when sitting with a jury, should be limited strictly to questions of law. We not only see no reason for such a difference, but none can be given that is satisfactory, and none in reality exists.

But there is another view of this subject. It could never have been the intention of the legislature to convert this court into a board of review for the assessment of property in Baltimore city, because the legislature had no authority to impose such a duty on this tribunal. If it be true that the appeal provided by section 170 was designed to bring up here for decision by this court the specific question as to whether the valuation placed upon Mr. Bonaparte's property is accurate, and the proper valuation to be placed on it, then the owners of all the property in the city have precisely the same right to require the court of appeals to revalue and reassess their property. The effect of the exercise of such a right would be to convert the court into a board of review charged with the duty of fixing the ultimate valuation on property for the purposes of taxation. Can that be done? The valuation of property for the purposes of taxation is not a judicial function at all. Under every general assessment law assessors have been appointed to make valuations upon view of the property, and ordinarily a board of review or some similar agency has been provided to which an appeal could be taken for the correction of errors. When disputes arose as to whether particular property was assessable at all, or whether its owner was lawfully chargeable with taxes in respect to it, judicial questions were presented, which the courts had undoubted jurisdiction to hear and determine. But we are not dealing with such a controversy. The function of assessing property for purposes of taxation is essentially not a judicial function, and it cannot be made a judicial function by being imposed upon or committed to the judicial department. In the case of Robey v. Commissioners (recently decided by this court) 48 Atl. 48, we had occasion to say, in speaking of an act of assembly which required the judges of certain circuit courts to approve the accounts of constables, sheriffs, and other officers against the county, that the duty thus attempted to be imposed was not judicial, and did not become judicial by being assigned to a judge. The thing to be done does not derive its character from the individual who does it. If it be not, by reason of its attributes, judicial, it does not become judicial by being performed by a judicial officer. Hence it is that the nature of the act must be sought in its attributes and qualities apart from the official title of the actor. The ordinary, usual valuation of property for purposes of taxation is in no sense a judicial act, though requiring the exercise of judgment in its performance. As this court can only be required to discharge judicial duties, it cannot, on an appeal involving solely the question of the accuracy of an assessment, be directed by the general assembly to sit in judgment on such a valuation, because such a valuation is not the result of the exercise of any judicial function, and it must be assumed that the legislature knew this, and, knowing this, that it did not intend, by the language it used, to include such a duty in the appeal which section 170 of the charter authorizes. There doubtless may be cases in the forum of equity where relief would be granted against an unlawful assessment, but we are not considering such a situation; we are dealing only with the power of the legislature to convert this court on appeals under section 170 into a final board of review and revaluation to reassess property for purposes of taxation. We hold that the general assembly could not lawfully require this court to exercise this nonjudicial function, and that, therefore, it did not intend to impose it.

For the reasons we have assigned, the appeal must be dismissed. Appeal dismissed, with costs.

Md. 1901.
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