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96 Md. 32, 53 A. 416

Court of Appeals of Maryland.
 WILLIAM SKINNER & SONS SHIPBUILDING
 & DRY DOCK CO.

v.

MAYOR, ETC., OF BALTIMORE et al.

Nov. 21, 1902.

Appeal from Baltimore city court; J. Upshur
 Dennis, Judge.

Proceedings by the William Skinner & Sons
 Shipbuilding & Dry Dock Company against the
 mayor and city council of Baltimore and the
 judges of the appeal tax court. From an order
 dismissing the petition, plaintiff appeals.
 Affirmed.

West Headnotes

Taxation 371 ↪2179

[371k2179 Most Cited Cases](#)

(Formerly 371k71)

A dry dock which had been in process of
 construction for 21/2 years before October 1,
 1901, and which was completed about November
 23d, was not assessed for taxation on October 1st,
 but was later assessed as omitted property, at a
 valuation of \$200,000. The admitted cost was
 \$300,000, most of which had been expended
 before October 1st, and on that date it was
 practically completed, with the exception of some
 dredging and a gate costing \$22,500, three-fourths
 of which had been paid, but which did not belong
 to the dock company until in position and tested.
 Held, that the property was so nearly completed
 that it was subject to taxation on October 1st,
 under Baltimore City Charter, § 148 , Laws 1898,
 c. 123, requiring the assessors to return all
 buildings and improvements and all property
 created or acquired since the last assessment.

Taxation 371 ↪2179

[371k2179 Most Cited Cases](#)

(Formerly 371k71)

Baltimore City Charter, art. 4, § 171, Laws 1898,
 c. 123, provides that the valuation of property
 subject to taxation in the city, as it shall appear on
 the assessment book of the appeal tax court on
 October 1st in every year, shall be final and
 conclusive, and constitute the basis on which the
 taxes for the next ensuing fiscal year shall be
 assessed and levied, and requires the court on that
 day, or soon after, to make out and deliver to the
 collector and board of estimates a statement of the
 valuation and assessment of property as it appears
 on the books of the court on said date. Code
 Pub.Gen.Laws, art. 81, § 138 et seq., Laws 1896,
 c. 120 , and Acts 1902, c. 417, require that the
 president or other proper officer of a corporation
 must furnish, on or before the 1st day of March, a
 true statement of its real property to the county
 commissioners and the appeal tax court, the
 information furnished to be of that in his
 possession as of January 1st of each year, and
 such real property shall be valued and assessed by
 said county commissioners and appeal tax court,
 respectively, to the company. The state tax
 commissioner is then to assess the shares of stock,
 and, in doing so, deducts the assessed value of the
 real property from the aggregate value of all the
 shares; but in no case shall he value the stock at
 less than the full value of the real estate and
 chattels, real and personal. A dry dock in course
 of construction on October 1, 1901, was not
 assessed on the books of the appeal tax court on
 that date, but was assessed by the court on
 January 6, 1902, and the dock was completed long
 before January 1, 1902. Held, that whether or not
 the dock was in such condition as to be subject to
 taxation on October 1, 1901, as an individual's
 property, it was properly assessed for the year
 1902 as being the real property of a corporation,
 as the president thereof could not have made a
 true statement without showing such property.

Taxation 371 ↪2179

[371k2179 Most Cited Cases](#)

(Formerly 371k71)

The fact that a dry dock in course of construction, and which was practically completed on October 1, 1901, was not technically a dry dock on that date, did not invalidate an assessment of taxes thereon.

Taxation 371 ↪ 2569

[371k2569 Most Cited Cases](#)

(Formerly 371k362)

Baltimore City Charter, art. 4, § 171, Laws 1898, c. 123, provides that the valuation of property subject to taxation in the city, as it shall appear on the assessment book of the appeal tax court on October 1st, in every year, shall be final and conclusive, and constitute the basis on which the taxes for the next ensuing fiscal year shall be assessed and levied, and requires the court on that day, or soon after, to make out and deliver to the collector and board of estimates a statement of the valuation and assessment of property as it appears on the books of the court on said date, but also enacts that “the foregoing provision shall not apply to property in the city liable to taxation and which may have escaped, or which may have been ‘omitted’ in the regular course of valuation, but such property shall be valued and assessed, and the owner or owners thereof charged with all back and current taxes thereon, whenever the same may be discovered and placed on the assessment books.” Section 36 et seq. requires the various officials to become actively engaged after October 1st in preparing for the collection of the tax based on that assessment. Held, that a dry dock in course of construction, which had not been assessed on October 1st, and which was being constructed on lots which had already been assessed to their former owners was, if taxable in such condition, properly treated as omitted property, under said proviso, and an assessment made on January 6, 1902, after a hearing on December 23, 1901, was valid.

Argued before McSHERRY, C.J., and FOWLER, BRISCOE, BOYD, PEARCE, SCHMUCKER, and JONES, JJ.

Carroll T. Bond and George Weems Williams, for appellant.
Wm. Pinkney Whyte and Chas. W. Field, for appellees.

BOYD, J.

This is an appeal from an order of the Baltimore city court dismissing a petition filed by the appellant which sought to have an assessment of its dry dock at the sum of \$200,000 stricken from the tax books of Baltimore city. The assessment was made on the 6th day of January, 1902, by the appeal tax court, after a hearing which was had on the 23d of December. The dry dock was commenced in 1899, and was not completed until the fall of 1901. It was built inside of a cofferdam. An excavation was *417 made of the size desired, which is sheathed on the two sides and the end next to the shore, and the other end is of stone and concrete; and in it there is a gateway, in which a gate rests. The dock is floored with heavy beams, supported by piles driven into the earth. The gate is described by Mr. Skinner, the president of the appellant, as “a caisson, and practically a little ship of itself, that floats about in the river; and we bring it in and put it down into place where the keel and stem posts are, and this gate makes a water-tight joint, and, when the pumping begins, the pressure from the outside keeps this little caisson gate up in its place and prevents leakage while they pump the dock out.” The dry dock structure “consists of buildings, power house, machinery, boilers, a gate,” etc. It is contended by the appellant that by virtue of a provision in the charter of Baltimore the appeal tax court is confined in assessments made by it to the 1st day of October of each year, and that as this structure was not completed on October 1, 1901, that court had no power to assess it for the year 1902. It is admitted that it cost \$300,000, and Mr. Skinner, in

reply to the question, "What are your views of its valuation of \$200,000?" said, "I would have returned to them at \$300,000, as the costs of the improvements we put there." Its condition about that time was thus described by him: "September 18, 1901, the water was first permitted to come into the dock. It took us possibly a week to flood the dock, and, after the dock was flooded, then this cofferdam had to be drawn out, and after that was done the dredging had to be done at the entrance. September 18th we only had 10 or 12 feet of water in the entrance, and we had to get that down to 24 feet. After that the sills had to be cleaned off. The dredging was finished November 4th, and the gate put in its place November 14th, and the dock first pumped out November 14th; and the blocking for the keel of the ship to set on was finished November 22d, and we docked the ship on November 25th." The gate was received November 12th, and it cost \$22,500, three-fourths of which had been paid on October 1st, but it was not considered the property of the company until placed in position and tested. The construction company which built the dock completed its work on November 23d. It is admitted that considerably more than \$200,000 had been actually paid out on October 1st, and it cannot be denied that, with the exception of the gate and some dredging, the dock was practically finished on that date. It was built on property purchased by the company, known as the Winebrenner and Houghton lots, which were still assessed in the names of those parties,-the former at \$9,467 for the lot and \$3,000 for improvements, and the latter at \$20,167 for the lot and \$17,500 for the improvements. The improvements originally on those lots had been destroyed, partly by fire, and the rest being torn down for the dock. The appellant paid the taxes on those assessments on January 31, 1902, which was after this assessment was made.

As was said in [Hopkins v. Van Wyck, 80 Md. 15, 30 Atl. 557](#), "To avoid confusion and uncertainty, some definite period had to be adopted as the

point of time in each year when the valuation or appraisal fixed upon the property actually assessed and charged upon the books to each individual would no longer be open to question, but would be conclusively ascertained, and made binding upon both the city and the taxpayer alike." That time, as now fixed by the charter of Baltimore, is the 1st day of October. Section 171 of article 4 of the Public Local Laws, known as the "charter of the city of Baltimore" (Laws 1898, c. 123), provides that "the valuation of the property subject to taxation in the city of Baltimore, as it shall appear upon the assessment books of said court on the first day of October in each and every year, shall be final and conclusive, and constitute the basis upon which taxes for the next ensuing fiscal year shall be assessed and levied"; but an important proviso follows that clause, which we will consider later. That section further requires the appeal tax court to make out and deliver to the city collector and board of estimates on the 1st day of October, or as soon thereafter as practicable, a statement showing the valuation and assessment of all the property subject to taxation in said city, "as it shall appear upon the assessment books of said court on said first day of October," and also that "the said statement shall be known as the taxable basis for the next ensuing fiscal year, and after the levy of taxes, it shall be designated as the tax roll for said year." Section 36 requires the board of estimates to make out, between the 1st day of October and the 1st day of November, three lists of moneys to be appropriated by the city council for the ensuing fiscal year. Section 40 requires that board on the 1st day of October, or as soon thereafter as practicable, to send with the ordinance of estimates to both branches of the city council a report showing the taxable basis for the next year, and the amount which can reasonably be expected to be realized by taxation for that year. That section also provides that the ordinance making the annual levy of taxes shall be passed by the mayor and city council in the month of November

in each year, and “the taxes levied under said ordinance in the month of November in each year shall be the taxes to be collected for the fiscal year next ensuing after the said month of November, and may be paid to the city collector on or after the first day of January next ensuing said levy.” Taxes on real estate and chattels real are to be deemed in arrears on the 1st day of July, and those on personal property on the 1st day of May. By section 42 the city collector is required in October, immediately upon the *418 receipt of the statement from the appeal tax court, to begin the preparation of the tax bills on said basis, and, after the levy has been made, to complete them and have them ready for payment on the 1st day of the next January, or as soon thereafter as practicable.

It will be seen from the references we have thus made to the charter, and other sections we might refer to, that the 1st day of October is the day on which the books are expected to be ready for the levy for the ensuing year, and from that date those connected with the levy and collection of taxes are required to be actively at work until their respective duties are performed. But the first clause in section 171, above quoted, is qualified as follows: “Provided that the foregoing provision shall not apply to property in the city liable to taxation, and which may have escaped, or which may have been omitted, in the regular course of valuation, but such property shall be valued and assessed, and the owner or owners thereof charged with all back and current taxes justly due thereon, whenever the same may be discovered and placed upon the assessment books.” And section 169 reads that: “In all cases where discoveries of assessable property are made by the said appeal tax court, either from the returns of clerks, registers or assessors, or in any other way, the said court shall assess the same and add the same to the amount on which taxes are to be levied.” It is undoubtedly desirable and important that, as far as possible, the assessable basis be known and determined by the day contemplated

by the charter. But if there be property which is taxable, but is not on the assessment books on that day, it ought not to escape taxation merely because it had not been reported by the owner, or had been overlooked by the tax officers before that date. We will consider later the question whether this dock was taxable, in the condition it was, on October 1st; but assuming, for the purposes of this branch of the case, that it was, we think it is clear that the appeal tax court was right in assessing it.

Referring to a provision in section 5 of article 50 of the City Code of 1892, which was very similar to the first clause in section 171, excepting that the day there fixed was the first Monday in March, this court said in *Hopkins v. Van Wyck*, supra: “But it was never designed by this provision to exempt from taxation for a current year the individual who, by adroitness or otherwise, succeeded in eluding the vigilance of the assessors, or who, by inadvertence, was not rated with all his assessable property on the first Monday of March of that particular year. Nor was this provision intended to put a limit or restriction on the power of the municipality to make an assessment of omitted or escaped property after the date indicated.” The opinion goes on to say that, if such had been its purpose, it would have been repugnant to the policy and spirit of the organic law itself; and it was expressly held in that case that the fact that the property was not put on the books until after the levy was made did not relieve it from the tax, it being “omitted or escaped property.” We think the learned judge below was right in treating this as omitted property, assuming, as we have said, that it was in such condition on October 1st as made it taxable. It is true that the land on which the dock was constructed was already assessed, although it was not assessed to the appellant, but to the former owners. But this is not a case where property already assessed had merely appreciated in value, or where the appeal tax court concluded after

October 1st that it was assessed too low, and then undertook to increase it for taxation during the fiscal year beginning the next January. These lots were assessed some years ago,-the record says, "On October 1, 1901, and for the several years prior thereto,"-certainly before the appellant procured them, as they were assessed to the former owners; and since that assessment these improvements, amounting to a sum well up to \$300,000 on October 1, 1901, had been put on them. The dock was in the course of construction for about two years and a half, and the authorities had not during that time attempted to assess it; probably thinking, if they knew of it, that it would not be just to assess it until it was about completed.

The charter shows that assessments of improvements are specially provided for. Section 148 requires every assessor to inform himself of all property "which may have been omitted in the assessments, and all buildings and improvements and all property created or acquired since the last assessment," and to value and return them to the court. Section 150 provides for the method to be pursued by the court before increasing an assessment of property already assessed, or adding new property not valued and returned by the proper assessors, and concludes by saying, "Provided, that nothing in this section shall be construed to apply to the valuation and assessment of new improvements or new property discovered and assessed and returned to the said court by the proper assessor." Improvements of this character, constructed since the last assessment, were required to be reported by the assessors. They were assessable property,-property that ought to be assessed. And by section 169 the court was required to assess any assessable property discovered by them. This dock had not been assessed, and, if it ought to have been, it was clearly "omitted," and within the proviso above mentioned. Section 173 of article 81 of the Code of Public General Laws (Laws 1896, c. 120)

expressly provides that in the valuation of real estate in Baltimore city the owner shall, in his schedule, "value separately the improvements upon each lot or parcel of ground in said city"; and by section 178 of that article the assessors are required to "determine and settle the value of each item of property returned in said schedule." So although*419 the improvements on land are a part of the realty, the statute itself contemplates that they shall be assessed separately, as is the universal custom, so far as we are aware, throughout the state. If, then, a vacant lot worth \$30,000 is assessed, and improvements worth \$300,000 are created on it, which are not assessed, why should they not be regarded as property which has been "omitted," within the meaning of section 171 of the charter? We think they clearly should be, and should be assessed, if in such condition as we have assumed this dock to be, in passing on this branch of the case.

The next question, then, is, was it in such condition on the 1st day of October, 1901, as justified the appeal tax court in assessing it? As we have seen, it was practically completed, with the exception of the gate and some dredging which was necessary to be done before using it. The greater part of its cost had been expended,-considerably more than the sum at which it has been assessed. If it was not assessable at that time, by reason of what was yet to be done on it, then it would be a great temptation for property owners to postpone making some small part of improvements until after October 1st. We do not mean to intimate that this appellant was in any wise influenced by such considerations, and there is nothing to suggest it in this case; but undoubtedly such might be the result in many instances, if the theory contended for be adopted. These taxes were for the year 1902, and for some weeks before the beginning of that year the dock was in actual use; and, although that of itself would not be sufficient to justify its taxation, it shows how near it was to completion,

and is a circumstance to be considered in determining the question. Indeed, with the exception of the gate, the dock proper was apparently completed before the 1st of October, but the cofferdam had to be removed and dredging done at the entrance. We were reminded by counsel for the appellant that Mr. Skinner testified that the structure was not a dry dock on October 1, 1901. That was merely his opinion, but, if he was technically right in his statement, it was certainly some kind of a dock, as he spoke in his testimony of letting the water into "the dock" on September 18th, and "it took us possibly a week to flood the dock, and, after the dock was flooded, then this cofferdam had to be drawn out." It was a dock on which the company had then expended more than a quarter of a million of dollars, and the additional expenditure of a few thousand dollars made it what Mr. Skinner called a dry dock worth \$300,000, and which his company will get the benefit of during the whole fiscal year for which it is asked to pay these taxes, on a basis of two-thirds of its cost. Neither the appeal tax court nor courts of law should deal with questions of taxation from such a technical standpoint, especially when it might enable the owner to escape taxation of property on which every principle of equity demands he should pay it. The real question to be determined in a case of this kind is, "Was this structure substantially completed, or so nearly so as it can fairly be said that it was on October 1st a subject for taxation?" And that, in our opinion, must be answered in the affirmative.

Another view suggests itself that strengthens the conclusion we have reached. The appellant is a corporation incorporated in this state for the purpose of constructing and operating this dock, and, although the record does not show what it is, it can be assumed that a company organized for such purposes has a capital stock. Section 138 of article 81 of the Code of Public General Laws requires the president or other officer of a

corporation to furnish annually to the county commissioners of each county and the appeal tax court of Baltimore city a list of its stockholders residing in them, respectively, on or before the 1st day of March. By section 141 of that article he is required to furnish, "at the time of making the returns of stockholders," to the county commissioners of the counties where the company owns real estate, and to the appeal tax court of Baltimore, if it owns any there, "a true statement of such real property situated or located in such county or city." It then provides that such real property shall be valued and assessed by said county commissioners and appeal tax court to the company, and requires them to give duplicate certificates of such valuation and assessment to the president or other officer, who shall transmit one of them to the state tax commissioner; and state, county, and city taxes shall be levied upon and paid by the company on such assessment in the same manner as the same are levied upon and paid by individual owners of real property. The tax commissioner assesses shares of stock of corporations, and this section states how he shall ascertain their value: "He shall deduct the assessed value of such real property *** from the aggregate value of all shares *** and divide the remainder by the number of shares of the capital stock *** and the quotient shall be the taxable value of each of such respective shares." The county and city taxes on the real property are paid to the county or city where it is situated, and those on the shares of stock where the stockholders reside. Section 138 of that article provides that "in no case shall the stock of any corporation, in the aggregate, be valued at less than the full value of the real estate and chattels, real and personal, held by or belonging to such corporation in the several counties and city of Baltimore, whether the shares of said stock are quoted on the market or not." Section 133 requires the president or other officer of the company to report to the tax commissioner a true and correct statement of the number of shares of the company, and the par value, with

such information as to their value as may be required*420 by the commissioner. That section originally required the report to be made by the 15th of April, but by Acts 1902, c. 417, the time has been changed to the 15th of March, and provides that the information furnished by the officer of the company shall be that in his possession “as of the first day of January of each year,” and the commissioner is to assess the shares as of that date. Section 141 requires the tax commissioner to certify to the county commissioners and to the appeal tax court his assessment of shares held by stockholders residing in their counties or the city of Baltimore, respectively; and the taxable value, for county and municipal purposes, is valued to the owners in the counties or city where they reside, and shares held by nonresidents are taxed in the county or city where the corporation is situated. Section 84 requires the company to pay the state taxes on shares of stock “for the previous year” on the 2d of January, but, as section 88a imposes a penalty if they are not paid by the 1st day of November, this court held in [State v. Trust Co., 86 Md. 583, 39 Atl. 523](#), that they were due at that time for the current year. It will thus be seen that the president or other proper officer of the company must furnish on or before the 1st day of March a true statement of its real property to the county commissioners and the appeal tax court, “and such real property shall be valued and assessed by said county commissioners and appeal tax court respectively to the” company. The state tax commissioner then assesses the shares of stock, and, in doing so, deducts the assessed value of the real property from the aggregate value of all the shares; but in no case shall he value the stock at less than the full value of the real estate and chattels, real and personal. Such being the law applicable to corporations, how could the appellant escape taxation on this dry dock for the year 1902, even if it be conceded that it was not in a condition on October 1st to be taxed? It was completed for months before the 1st day of

March, and the president of the company could not have made “a true statement” of the company's real property in Baltimore without so showing. It could then undoubtedly have been valued and assessed by the appeal tax court, if not previously assessed; for, if that were not so, a corporation could readily avoid the payment of taxes which it justly owed. Suppose this company's stock was valued in the aggregate at \$300,000, and its real property in Baltimore is worth for the purposes of taxation \$250,000, and the stockholders live in Baltimore county, for example, where the tax rate is lower than in the city; is it not apparent that the company would thus escape some of the taxation which it ought to pay, and Baltimore city would lose taxes that it was entitled to, if that real estate is only assessed at \$50,000? It does not appear whether the tax department of the state formerly fixed a particular date on which the values should be ascertained, but the act of 1902 has now wisely named a time, and fixed “the first day of January next preceding” as the date as of which the tax commissioner shall assess the shares of stock; and that will require him to ascertain the value of the real estate as of that time, in order to make the assessment of the shares in the manner required by law. So it seems clear to us that if there was any question about this dock being on October 1st in such condition as to be taxed if it belonged to an individual, which we cannot admit, it should have been included for the year 1902, because it was real property belonging to a resident corporation, if the company had a capital stock, which we assume it had, and was entirely completed at least as early as November 25, 1901.

We are not called upon to pass on the right to collect taxes on the improvements which were formerly on this property, but had been destroyed. The company made no application to the appeal tax court for an allowance or deduction on account of that loss, as provided for in the charter; and, moreover, there is nothing before us to show

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whether or not it received the benefit of a reduction on account of those improvements, before the tax commissioner, when he assessed its shares of stock.

Order affirmed; appellant to pay the costs above and below.

Md. 1902.
William Skinner & Sons Shipbuilding & Dry Dock Co. v. City of Baltimore
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