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115 Md. 446, 81 A. 3

Court of Appeals of Maryland.
WANNENWETSCH et al.
v.
**MAYOR** AND **CITY COUNCIL** OF **BALTIMORE** et al.
April 5, 1911.

Appeal from Circuit Court of Baltimore City; Alfred S. Niles, Judge.

Suit by Mary Wannenwetsch and others against the Mayor and City Council of Baltimore and others. From a decree dismissing the bill, complainants appeal. Affirmed.

West Headnotes

**Municipal Corporations 268 ⚿974(2)**
268k974(2) Most Cited Cases
Under Laws 1908, c. 167, which re-enacts and amends Baltimore Charter, Laws 1898, c. 123, § 170, and provides that, on an appeal from an assessment to the city court, the court shall hear the cause de novo, and the action of the appeal tax court shall not be held void for any reason if due notice of the proceedings shall have been given, the city court is required to declare assessments and classifications void when made without due notice, so that one whose property has been assessed without due notice is not entitled to come into equity to have the assessment declared void, having a clear remedy at law.

**Municipal Corporations 268 ⚿974(2)**
268k974(2) Most Cited Cases
Due notice required by Baltimore Charter, Laws 1898, c. 123, § 170, as amended and re-enacted in Laws 1908, c. 167, to sustain the validity of an assessment, need not be personal notice, the leaving of a notice at the house which is subject of taxation being sufficient.

**Taxation 371 ⚿2572**
371k2572 Most Cited Cases
(Formerly 371k363)
Due notice required by Baltimore Charter, Laws 1898, c. 123, § 170, as amended and re-enacted in Laws 1908, c. 167, to sustain the validity of an assessment, need not be personal notice.

**Taxation 371 ⚿2642**
371k2642 Most Cited Cases
(Formerly 371k453)
Under Laws 1908, c. 167, which re-enacts and amends Baltimore Charter (Laws 1898, c. 123) § 170, one whose property has been assessed without due notice is not entitled to come into equity to have the assessment declared void, having a clear remedy at law.

***3** S. S. Field, for appellants. W. H. De C. Wright, for appellees.

Argued before BOYD, C. J., and BRISCOE, PEARCE, PATTISON, and URNER, JJ.

PEARCE, J.
This appeal is from an order or decree of the circuit court of Baltimore city dismissing a bill for an injunction against the mayor and city council of Baltimore city and Frank Brown, collector of state and city taxes for Baltimore city, restraining them from collecting taxes at the ***4** full city rate upon the properties of the several plaintiffs, and requiring them to accept from the plaintiffs city taxes at the rate of 60 cents in each hundred dollars for the years 1909 and 1910.

[1] The bill alleges that all of the properties of the several plaintiffs mentioned in the proceedings are located in a block in that part of Baltimore city which was annexed thereto by Acts 1888, c. 98, and that said block contains more than 200,000 superficial square feet, and up to the year 1909 was not surrounded by streets improved as required by Acts 1902, c. 130, and that up to and until the year 1909 all said properties were classified for taxation for city purposes under said

last-mentioned act at 60 cents on the $100, and all those allegations are established by the undisputed evidence. The bill then further charges that said properties were classified for the years 1909 and 1910 at the full city rate of $1.95 in the $100, and that such classification by the appeal tax court of Baltimore city was illegal and void, both because said block was not subject to such classification, and because the same was made without any notice to any of the plaintiffs, and that none of the plaintiffs knew such classification had been made until after the time allowed by section 170 of the city charter (Acts 1908, c. 167) for appeal to the Baltimore city court. The appellants concede they would have had an adequate remedy at law for the alleged wrongful classification by the appeal thus provided, if due notice of the purpose to make such classification had been given them, but allege that the want of due notice rendered the classification void, and entitles them to relief in equity. To sustain this contention, they rely upon the case of Baltimore City v. Poole & Son Co., 97 Md. 67, 54 Atl. 681, decided in 1903. In that case both the assessment and the classification of the plaintiffs' property had been changed, and the bill alleged that no notice of either purpose had been given to the plaintiff. Sections 150 (Laws 1898, c. 123) and 164A (Laws 1900, c. 347) of the city charter expressly required notice to the owner as respects assessments, but there was then no statutory declaration of the power of the appeal tax court to classify property, nor any statutory regulations of the procedure for the purpose of classification so as to determine when property in the annexed part of the city was brought within those conditions of the annexation acts which would permit its taxation at the full city rate. There was a demurrer to the bill which was sustained by the circuit court, and its decree was affirmed here on appeal, this court holding that the prescribed notice as to assessment and reasonable notice as to classification was necessary to give jurisdiction to the appeal tax court.

It was contended by the city in that case that, under section 170 of the city charter, the owner of the property, when he first obtained knowledge of the increased assessment and of the classification bringing the property within the full city rate of taxation, had the right *then* to ask from the appeal tax court an abatement of the assessment and the restoration of the property to the 60-cent rate for city taxes, and that, upon its refusal to make the abatement or to order the restoration of the 60-cent rate, he could appeal within 30 days from such refusal to the Baltimore city court, and, thus having a clear legal remedy, that he could not resort to equity for relief. But we held that section 170, as it then stood, had no relation to the jurisdiction of the appeal tax court, whose jurisdiction was absolutely dependent as to the *assessment* upon the giving of the notice prescribed in sections 150 and 164A, and as to the classification, upon the giving of reasonable notice, and that section 170 had no relation to void assessments or classifications. We said section 170 "deals with questions arising after a *valid*, though *erroneous*, assessment has been made. The remedy against an invalid assessment, one made without jurisdiction to make it, is to strike it down, though the result may be to lose the taxes for that year. The remedy against an assessment *valid as an assessment*, but illegal because of the manner in which it was made, or erroneous because of under or over valuation, is by application recognizing the jurisdiction to assess, but attacking the legality or regularity of the form of the proceedings under the conceded jurisdiction." As the demurrer in that case conceded the jurisdictional defect of want of notice, and the charter contained no provision authorizing the appeal tax court or the Baltimore city court to declare an assessment to be null and void, but only "to reduce or abate" it, we held that relief against a void assessment could only be obtained in equity, and we consequently affirmed the decree of the circuit court. But section 170 of the charter has been repealed and re-enacted by

chapter 167 of the Acts of 1908 with some very material changes, in consequence of which the city now renews the contention made by it in the Poole Case, supra, and in considering this contention it will be necessary carefully to compare the original with the amended section.

One obvious purpose of that act, disclosed by a cursory reading, was to give statutory recognition to the power of classification which in Poole's Case we said the appeal tax court must be held to possess; also, to place classification and assessment upon the same footing as respects procedure, and hence whenever the word "assessment" is mentioned in the original section the word "classification" is coupled with it in the amended section. Another purpose of the act of 1908 was to enlarge the power of the Baltimore city court on appeals from the appeal tax court, and to define more clearly the method of procedure in such appeals, ***5** and, in that we may more readily compare the original and amended section in these respects, we have placed that portion of each section which relates to the trial of these appeals in parallel columns, as follows:

Original Section.

The person or the city appealing to the said Baltimore city court shall have a trial before the court without the intervention of a jury, and the court sitting without a jury shall ascertain or decide on the proper assessment, and shall not reject or set aside the record of the proceedings of the judges of the said appeal tax court for any defect or omission in either form or substance, but shall amend or supply all such defects or omissions, and assess, increase or reduce the amount of the assessment, and alter, modify and correct the record of proceedings in all or any of its parts as the said Baltimore city court shall deem just and proper.

Amended Section.

The person or the city appealing to the said Baltimore city court shall have a trial before the court without the intervention of a jury, and the court sitting without a jury, shall *hear the case de novo*, and shall ascertain and decide on the proper assessment *or classification of the property for the year involved in the appeal; and neither the action, nor the record of the proceedings of the judges of the appeal tax court in the premises shall be held to be or declared void* for any reason whatsoever; provided due notice of the proceedings shall have been given to the parties entitled by said judges of the appeal tax court; and the said Baltimore city court shall assess a new, or classify anew, as the case may be, the property forming the subject of the appeal; provided however that in the absence of any affirmative evidence to the contrary, the assessment or classification appealed from shall be affirmed.

Chapter 167 of 1908 is a remedial statute designed to effect a complete system for the correction of all errors in assessing and classifying property in Baltimore city, and to accomplish this with the least possible delay and expense both to the city and to the taxpayer, and it should be liberally construed to effect the purpose of its enactment. This purpose can plainly be best attained by conferring upon a single tribunal jurisdiction over the whole field covered by the text of section 170. Under the original section, only a court of equity could declare an assessment or classification to be null and void (no power being conferred upon the Baltimore city court to that end), and, when so declared by a court of equity, it was necessary to go back again to the appeal tax court, and there have another assessment or classification made. Under the amended section 170, the Baltimore city court on appeal is required to try the case de novo, and by the clearest and strongest implication is authorized and required to declare assessments and classifications to be null and void *when made without previous due notice to the owners or*

*persons entitled thereto*. No other rational construction can be placed upon the language of the amended section, which forbids that "neither the action or the record of the proceedings of the judges of the appeal tax court shall be held to be, or declared, void for any reason whatever; *provided due* notice of the proceedings shall have been given to the parties entitled," than that such record may and shall be declared void, *when due notice has not been given*. Unless such construction is given to that language, the Baltimore city court could not proceed, as directed in the next sentence, "to assess or classify anew" the property in question. A new assessment or classification can only be made when the old one has been superseded as void. The only object of a bill in equity in such a case as that before us is to have the assessment or classification declared to be null and void, and, if the Baltimore city court is authorized so to declare upon the same state of facts as has heretofore been required in a court of equity, there can be no occasion to resort to a court of equity. The same language which in giving complete jurisdiction to a court of law created a clear legal remedy took away the right to resort to equity. Our conclusion, therefore, is that upon the ground just considered the decree of the circuit court should be affirmed.

Chapter 167 of 1908 was before us in the case of Mayor and City Council of Baltimore v. Hurlock, 113 Md. 674, 78 Atl. 558, decided November 16, 1910, and published in the Daily Record of November 23, 1910. The only contention there made was that the assessment was unequal as compared with other property of the same kind in the same neighborhood, and that the property was overvalued; the appeal in that case being from rulings of the Baltimore city court. In the course of the opinion in that case, referring to the same language of section 170 as amended which is transcribed herein, it was said: "No assessment can be declared void, but the city court must assess the property in question anew." This obviously meant that *no merely irregular or erroneous assessment such as was there complained of* could be declared void; the qualification contained in the amended section, "provided due notice of the proceedings shall have been given to the parties entitled by said judges of the appeal tax court," being inadvertently omitted, as not involved in that case. This will appear from a later passage in the same opinion where it was said that the object of the section as amended was to "avoid a total failure of any assessment such as occurred in Consolidated Gas Co. v. Baltimore, 101 Md. 559 [61 Atl. 532, 1 L. R. A. (N. S.) 263, 109 Am. St. Rep. 584], and would occur under the original section 170 whenever it became necessary to set aside an assessment appealed from."

[2] It does not appear from the opinion of the learned judge below what view he took of the ground upon which we have placed our affirmance of his decree, as he decided the case upon other grounds, holding that "due notice" does not necessarily mean that notice should be personally served in the process of taxation, and that the notices which in this case were left at each house, which was the subject of taxation constituted due notice, and that, therefore, the plaintiffs'***6** remedy was by appeal to the city court. With this view we fully agree, and should be quite content to affirm upon that ground alone, but, with a view to settling the practice, we have deemed it best to decide now the question thus renewed under the amended section 170 by the city's solicitors.

Decree affirmed, with costs to the appellees.

Md. 1911.
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