

DUTHIE v. THE VALUER-GENERAL.

S.C.

IN BANCO.

“The Government Valuation of Land Act Amendment Act, 1900,” Section 2 WELLINGTON.
—“Unimproved Value”—Lessee’s Interest—Principle of Assessment.

1901.

September 9;
November 5.

STOUT, C.J.
EDWARDS, J.

The Government Valuation Department, in assessing the value of a lessee’s interest in the unimproved value of land under the above Act, should take the lease, and, looking at all its provisions, ascertain what the unexpired term might be expected to realise by sale if there were no improvements whatever upon the land, and if such unexpired term were offered for sale on such reasonable conditions as a *bonâ fide* seller might be expected to require.

To treat the annual value as being necessarily equal to 5 per cent. upon the capital value is to proceed upon an erroneous basis.

In dealing with the matter the existing improvements must be put completely out of the question. It is fallacious and misleading, therefore, to enter upon calculations as to the value of the existing buildings, and the amount required to provide for a sinking fund sufficient to recoup their cost, with a view to determining the value of the lessee’s interest in both land and improvements, and then, by a process of deduction, arriving at the value of his interest in the land alone.

THIS was an appeal from a judgment of the Assessment Court at Wellington, sitting under “The Government Valuation of Land Act, 1896,” and “The Government Valuation of Land Act Amendment Act, 1900,” in the matter of an objection by John Duthie, of Wellington, iron-merchant, to certain valuations.

The facts of the case and the mode in which the Assessment Court dealt with the matter before it will appear from the judgment appealed from, which was delivered by W. R. Haselden, Esq., S.M., as President of the Court, on the 10th of July, 1901, in the following terms:—

Mr. John Duthie is the “owner” of a leasehold estate situate in Willis and Victoria Streets, Wellington.

The tenure is for forty-two years from 1884, and has therefore twenty-five years to run, at a rental during the next four years of £408 14s. 2d. per annum, and then for twenty-one years at £583 14s. 2d. per annum. The buildings and improvements erected by Mr. Duthie are worth £8,273.

The Department arrive at the value of Mr. Duthie’s interest as owner by assessing the value of the land at £16,030, and the annual value at 5 per cent. on this sum—viz., £801 5s.—and by computing the difference between the rent actually paid and this latter sum of £801 5s.

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The objector (Mr. Duthie) assents to the assessment of the value of the fee-simple of the land unencumbered by leases or other encumbrances, but argues, first, that 5 per cent. on that sum is not always a fair rental, and that the whole conditions of the lease must be considered. In this case the buildings become the property of the owner in fee at the expiration of the lease.

The 5-per-cent. calculation is not one provided for by the statute, and would not always be the fair annual value. In cases where the land is unimproved and the term is very short, and is saddled with covenants to build without compensation, or with other onerous conditions, the 5 per cent. on the capital value would not apply. It is, however, a test by which the assessment can be tried in many cases, of which the present appears to be one.

The objector, however, says that the Department has elected to adopt the 5-per-cent. basis, and on that basis he is entitled to calculate in the rent he pays the proportionate part of the value of the buildings which each year falls to the owner in fee; and no doubt cases may arise in which this argument would prevail. If, for instance, the full rental obtainable from the whole premises is insufficient to pay the ground-rent and the cost of the buildings before the end of the term (always supposing that the buildings fall to the superior landlord at the end of the term), then, no matter what the value of the land may be, it is clear that the tenant for years has no assessable interest in the unimproved value.

Each case must be judged on its own circumstances.

In the present case the annual rentals obtained from the whole premises amount to £1,657 per annum, and the ground-rents paid, *plus* interest on capital expended in buildings, sinking fund to extinguish that capital in twenty-five years, insurance, upkeep, and all incidental expenses, amount to £1,207, thus leaving a clear annual profit to Duthie of £450. This method of calculation is in favour of the objector, because the sinking fund should not be calculated as from the present date, but from the date the buildings were erected. It is, however, sufficiently accurate for the purposes of this particular judgment. The value of Mr. Duthie's interest in the whole premises, or, in other words, the capital value of his interest, is the present value of £450 for twenty-five years; but the question then arises, how much of this sum should be appropriated to "unimproved value" and how much to "improvements." Mr. Duthie argues that the profit should be appropriated to his investment in the "improvements." He is, however, debarred from doing this by the statute, which provides that the value of the improvements shall in no case be deemed to be more than the cost of such improvements estimated at the time of the valuation, exclusive of the cost of repairs and maintenance.

It follows, therefore, that Mr. Duthie can deduct from the calculations of his annual profit the sinking fund and interest on the improvements; or, if he does not do this, he can compute the present value of his excess of income over output, without deducting the sinking fund, and from the capitalised value of such excess deduct the present value of £8,273 payable twenty-five years hence. But he cannot add to the output such sinking fund and also add to the rent a proportional part of the value of the buildings.

Estimated on the basis of the annual profit made by Mr. Duthie, the value of his interest would be £6,300, as against £3,690 assessed by the Valuation Department on the 5-per-cent. basis. But the difference would be partly made up by assessing interest on the cost of the buildings at 6 per cent. instead of 5 per cent.—and we think that 6 per cent. would be a more nearly correct basis in this instance—and by remembering that the *assessable* interest is the *saleable* value. No purchaser would give the full arithmetical value. He would allow a good margin for possible depreciation, for his own trouble, and for the risks attendant on all such investments.

Taking the whole matter into consideration, it appears that the estimate made by the Government Valuation Department is certainly not above the marketable value of the objector's interest in the property, and the assessment should be confirmed.

The fee-simple of the land in question was vested in the Wellington College Governors, and was exempt from taxation on that ground.

Skerrett, for the appellant:—

The principle upon which the Assessment Court determined the value was erroneous. The Court should simply have ascertained the saleable value of the appellant's lease unencumbered by buildings. The value should have been determined by expert testimony. The principle upon which the Court actually proceeded is erroneous, because it adds to the unimproved value the increased value given to the land itself by the erection of suitable buildings, by the skill and energy of the owner, and by his opportunities and capacity of obtaining tenants.

[*STOUT*, C.J.—The saleable value of the land itself might in the same way be depreciated, and often is, by the existence of old buildings upon it, or the erection of expensive and unsuitable buildings.]

That is so. Section 2 of "The Government Valuation of Land Act Amendment Act, 1900," defines "unimproved value," "value of improvements," "improvements," "capital value," and "owner." No difference is made by the statute between the method of assessing freeholds and leaseholds. "Owner" is defined to include both. The principle is to tax the unearned increment, not the value given to the land by the buildings, either directly or indirectly. It is absurd to expect 5 per cent. on £16,000 in these days. No evidence was taken as to the saleable value.

[*H. D. Bell*, for the respondent. — That is not admitted. Argument must be limited to what appears on the case, and the case is limited by subsection 3 of section 19 of "The Government Valuation of Land Act Amendment Act, 1900."]

The test the Assessment Court put was not what was the saleable value, but what could the appellant afford to give. *Dodds v. Assessment Committee of Poor-law Union of South Shields*(1) shows the principle upon which such questions should be dealt with. Where a Magistrate proceeds upon a misconception of the law his decision is appealable: *Knott v. Miller*(2).

(1) [1895] 2 Q.B. 133.

(2) 12 N.Z. L.R. 397.

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H. D. Bell, for the respondent :—

The Court did assess the saleable value. The calculation of the Court as to a sinking fund, and so on, was in answer to an objection raised by the appellant that he had to hand over the buildings at the end of his term, and that that reduced his interest to *nil*. According to the appellant's contention, if the landlord here were taxable he would have to pay the whole tax, although the appellant's lease is admittedly a valuable one. The basis of the decision of the Assessment Court is that 5 per cent. on the capital value is a fair test. The process must necessarily be empirical. The Court cannot lay down any general principle. The Court below has assessed the selling-value as a question of fact. There is no point of law. This Court cannot presume that the Court below has proceeded on a wrong basis.

Skerrett, in reply :—

The case was presented wholly and solely on a 5-per-cent. basis. The Court went solely on that. There was not a general consideration of the letting-value without buildings. The appellant's objection was to the 5-per-cent. basis.

Cur. adv. vult.

STOUT, C.J., delivered the judgment of the Court(1) as follows :—

This is an appeal, by leave of the President of an Assessment Court, under section 19 of "The Government Valuation of Land Act Amendment Act, 1900," for the purpose of determining whether or not the Assessment Court has assessed the unimproved value of the appellant's interest as lessee in certain lands upon correct principles. The lease is for forty-two years from 1884, and has twenty-five years to run, at a rental during the next four years of £408 14s. 2d. per annum, and thereafter at a rental of £583 14s. 2d.

The case stated shows that the Government Valuation Department arrived at its estimate of the value of the appellant's interest as lessee in the unimproved value of the land demised by first assessing the unimproved value of the fee-simple, free from any tenancy, at £16,030, and the annual value at £5 per cent. on this sum—namely, £801 5s.—by next deducting from this sum of £801 5s. the rent actually paid by the appellant, and by then capitalising the value of the difference for the unexpired period of the lease.

(1) Stout, C.J., and Edwards, J.

The Assessment Court has affirmed the valuation. In dealing with the matter the Assessment Court has entered upon calculations as to the amount of profit-rental received by the appellant, the amount expended by the appellant in improvements upon the land demised, and the amount required to be set aside as a sinking fund to recoup the appellant at the end of his lease the amount expended in buildings. The Assessment Court has then proceeded to capitalise the amount which that Court considered to be profit-rental over and above the ground-rent and the amount required as a sinking fund to pay for the buildings. Finding that the amount produced by such capitalisation exceeds the value arrived at by the Government Valuation Department, the Assessment Court has arrived at the conclusion that the amount assessed is not above the marketable value of the appellant's interest in the unimproved value of the property, and has dismissed the appeal.

It appears to us that both the Government Valuation Department and the Assessment Court have proceeded upon principles other than those directed by the statute. "The Government Valuation of Land Act Amendment Act, 1900," section 2, defines "owner" as meaning the person who, whether jointly or separately, is seised or possessed of or entitled to any estate or interest in land, and "unimproved value" as meaning the sum which the owner's estate or interest in any piece of land, if unencumbered by any mortgage or other charge thereon, and if no improvement existed thereon, might be expected to realise at the time of valuation, if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller might be expected to require. This definition is clear and specific, and it should be followed, whatever the results may be. The duty of the Government Valuation Department therefore is, following the definition, to take the lease, and, looking at all its provisions, to ascertain what the unexpired term might be expected to realise by sale if there were no improvements whatever upon the land, and if such unexpired term were offered for sale on such reasonable conditions as a *bonâ fide* seller might be expected to require. In dealing with the matter upon this basis the improvements must be put completely out of the question. The land is, for this purpose, to be treated as though it were bare and unimproved at the time when the valuation is made. To treat the rental of land as being necessarily equal to £5 per cent. per annum upon its capital value, as has been done by the Government Valuation Department,

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is therefore clearly to proceed upon an erroneous basis. It is equally clear that to enter upon calculations as to the value of the buildings, the amount required to provide for a sinking fund sufficient to recoup their cost, and the profit-rental derivable from the land in its unimproved state, is fallacious and misleading.

As it appears from the case that the Assessment Court has been guided by these considerations in arriving at its conclusion, we think that it has misdirected itself in matter of law, and that an appeal therefore lies, notwithstanding that the Assessment Court has found as the result of its investigation that the assessment is not above the marketable value of the appellant's interest in the unimproved value of the property.

The appeal must therefore be allowed, and the matter must be remitted to the Assessment Court with a direction to ascertain the value of the appellant's interest in the unimproved value of the property in the manner above indicated.

We allow to the appellant for the costs of appeal £10, and the fees of the Court.

Appeal allowed.

Solicitors for the appellant: *Menteath & Beere* (Wellington).

Solicitor for the respondent: *Crown Solicitor* (Wellington).
