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GEORGE E. MELLOR

v.

HARBOUR PARK DEVELOPMENTS LTD.,
MARWEST HOTEL COMPANY LTD.,
MARWEST HOLDINGS LTD.,
and
CITY OF VANCOUVER

British Columbia Court of Appeal

Before: MR. JUSTICE H.A. MACLEAN, MR. JUSTICE N.T. NEMETZ, and MR. JUSTICE J.D. TAGGART

Vancouver, May 19, 1970

S.R. Chamberlain for the Appellant
M.I. Catliff for the Board
J.E. Spencer and T.P. Warren for Marwest Hotel and Marwest Holdings
D.C. Paynter for Harbour Park Developments Ltd.
T.R. Bland for the City of Vancouver

Per Curiam:

We do not need to trouble counsel for the respondents for a reply.

A brief account of the facts in this case is necessary before we approach the problem posed by the present application.

Mr. Mellor is apparently a taxpayer of the City of Vancouver and he has appealed against three assessments - one, a City of Vancouver assessment against Marwest Hotel Company Limited; another against Marwest Holdings Limited, and still another against Harbour Park Developments Limited. The questions involved in these three appeals, we are informed by counsel, are practically identical and their chronology proceeds in this way:

The three companies are owners of land in the City of Vancouver and appealed against their assessments. Mr. Mellor challenged the values involved in these assessments in the Court of Revision and he lost. Then he appealed to the Assessment Appeal Board and there lost again. He asked for a stated case pursuant to section 51 (2) of the *Assessment Equalization Act*. He did get the stated case, but he then asked to have the case remitted back for a restatement. The matter came on before Mr. Justice Seaton, who dismissed the stated case, saying that the dismissal was for want of jurisdiction. As far as I am concerned, the fact of dismissal is the feature that I am interested in.

Mellor firstly appealed to the Court of Appeal, asking for an extension of time within which to appeal. Another division of this Court dealt with the matter on the 13th of this month and the extension was refused.

The appeal from an order of the kind appealed against here appears to be under subsection (7) of section 51 of the *Assessment Equalization Act*, which is chapter 18 of the *Revised Statutes of British Columbia, 1960*, and that subsection reads as follows:

> An appeal lies from the determination of the Judge of the Supreme Court to the Court of Appeal upon any point of law raised upon the hearing of the appeal by such Judge. Notice of such appeal shall be given within seven days from the day on which the Supreme Court Judge makes available his reasons for judgment. Such appeal shall be determined and judgment given thereon by the Court of Appeal if it is then sitting, or, if it is not, at the sitting of the Court of Appeal next following the pronouncing of the judgment appealed from, and for which notice of appeal can be given under the Statute or rules governing appeals to the said Court, otherwise such judgment shall stand. The rules in regard to appeals from the determination of a Judge of the Supreme Court to the Court of Appeal shall apply under this subsection.

It is to be noted, first of all, that the provisions with regard to appeals as they are dealt with under the *Assessment Equalization Act* are considerably more restrictive than they are under the general sections governing appeals under our *Court of Appeal Act*, which latter sections are found in section 16 of the *Court of Appeal Act,* which gives a would-be appellant 45 days in which to appeal; and under section 26 the appellant is given a right to apply for an extension of time within which to appeal.

It should be noted, too. that the *Court of Appeal Act* is one of the ancient statutes of this Province, going back, I think to 1910 or 1911, when our first Court of Appeal was instituted, whereas the *Assessment Equalization Act* took effect only in 1958. The point is that in 1958 the Legislature had before it and had knowledge of the general provisions with regard to appeals and chose to impose the restrictions to which I have just referred. These restrictions, of course, are restrictions which govern a very particular type of appeal, that is, appeals respecting assessment of land; whereas the general sections of the Court of Appeal Act can be fairly categorized in that manner, that is, as general sections.

The three companies which I mentioned in opening now apply to quash the appeal of Mellor.

In my view, this problem posed here was fully and squarely dealt with by Chief Justice Sloan in the case of *In re Electric Power Act* (1948) 1 Western Weekly Reports, 417: and the question of chronology was dealt with in the case of *Meldrum* v. *Corporation of the District of South Vancouver* (1916) 22 British Columbia Reports, 574. In other words, really, there was a repeal by implication with respect to the general provisions relating to appeals where issues of this kind are sought to be litigated. The case of *In re Winnipeg, Selkirk and Lake Winnipeg Railway* (1934) 1 Western Weekly Reports, 744, is also relevant to the present issue, where Mr. Justice Dennistoun observed that the spirit of the Act required prompt settlement of the assessment rolls.

In this case, of course, the appeal provisions are designed to force would-be litigants into the position of making up their minds and issuing their notices of appeal in a very short time, in this case seven days.

In my view the code which must govern these appeals is the code found in section 51 of the *Assessment Equalization Act*, and in my opinion the motions of the three companies which I have mentioned should be given effect to and the appeals quashed.

NEMETZ, J.A. (*oral*): I agree.

TAGGART, J.A. (*oral*): I agree.

MACLEAN, J.A. (*oral*): Costs will follow the event.