

Privy Council Appeal No. 2 of 1915.

La Corporation de la Ville de Thetford Mines *Appellants,*

v.

Amalgamated Asbestos Corporation, Limited *Respondents,*

FROM

**THE COURT OF KING'S BENCH FOR THE PROVINCE OF
QUEBEC (APPEAL SIDE).**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1916.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD ATKINSON.

LORD SHAW.

LORD PARMOOR.

[*Delivered by the LORD CHANCELLOR.*]

The resolution of the dispute in this case depends upon the true meaning to be given to a short, but equivocal section in a Statute of Quebec (5 Edw. VII, cap. 48), by which the appellants were incorporated.

The question raised is as to the liability of the respondents, who are a mining company, to pay a sum of 1,711.60 dollars, the proportion, assessed in respect of their buildings, machinery, and fixtures, of a special tax levied by the Corporation for the purpose of providing an aqueduct and waterworks for the town. The Court of King's Bench of the Province of Quebec, reversing the judgment of the Superior Court, have declared that the respondents are not liable, and from them this appeal has been brought.

The appellants were formerly the Corporation of the village of Kingsville, in the Province of Quebec, but by the statute to which reference has already been made they were incorporated under their present name on the 20th May, 1905. By section 4 of the statute the territory and boundaries of the town were defined, and within that territory the respondent company carries on its business of mining and

owns immovable property consisting of land, asbestos mines, buildings, and machinery.

In the statute giving powers to the Corporation special provisions are contained for taxation relating to mines, and these are to be found in section 21 and its three sub-sections. It is sub-section 3 alone which gives rise to the difficulty in this case, but in order to ascertain the true meaning of that sub-section it is necessary to consider the section as a whole. It is in the following words:—

“1. The Council may, notwithstanding any law to the contrary, make, amend, or repeal by-laws to compel every person or company owning or occupying lands comprised within each division described in the following article, whether they mine or do not mine on the said land, to pay the municipality a special yearly tax determined in the following manner:—

“(a.) A sum of 50 dollars, for every person or company not mining on its own land, or paying less than 10,000 dollars in wages to its employees, yearly;

“(b.) An additional sum of 100 dollars, for every 10,000 dollars of wages paid to the employees, provided the total amount of the tax does not exceed 500 dollars.

“2. The tax above designated can be imposed only during twenty years after the coming into force of the present Act.

“3. The persons and companies subject to this special tax shall be exempt from any other special tax in respect to their mining operations.”

After their incorporation the appellants duly passed certain by-laws. The first on the 26th December, 1905, was identical in terms with section 21. The second was passed on the 17th May, 1909, and was adopted on the 9th June, 1909, and it is this by-law by which the power to levy the tax in question was conferred on the appellants. It took the form of authorising the issue of certain debentures to secure a loan of 200,000 dollars, the amount to be raised for the purpose of paying debts incurred in the purchase of an aqueduct and the building or improving of a system of water-works; in order to provide for the interest at 5 per cent. upon this money and a sinking fund of 1 per cent., it further provided that the sum of 12,000 dollars should be collected annually for a period of 45 years by a special tax on the immovable property situated within the limits of the town, and such tax was imposed rateably at so much in the dollar on all such property within the district according to the valuation roll then in force. Under this by-law the respondent company was assessed in respect of its immovable property at a total sum of 1,884.60 dollars. The assessment was distributed between two mines owned by the respondent, and known as the King's Mine and the Beaver Mine, and made up of various sums appropriated to different descriptions of property, the total special tax on the land being 173.70 dollars, and that on various items under the following heads—buildings, mill, storage, &c., mill machinery and installation, hoisting apparatus, rolling-stock and track, office—being 1,711.60 dollars in all, thus making up the total sum of 1,884.60 dollars.

This sum the company declined to pay, and these proceedings were instituted for its recovery. The ground of defence to the

action depended entirely upon sub-section 3 of section 21, the company alleging that the tax was a special tax in respect to their mining operations within the meaning of that sub-section, and that they were consequently exempt from its payment. The Superior Court found against them for the total sum, but the Court of King's Bench limited the tax to the items representing the lands, namely, 173·70 dollars, and held that, in respect of the other items, the company had established their defence.

Their Lordships are unable to agree with this view. In ordinary language, mining operations are something quite distinct from the means by which those operations are carried out. Ownership of property and the use to which that property is put are separate conceptions, and, in their Lordships' opinion, the Court of King's Bench was in error in thinking that in the present instance these two ideas were one.

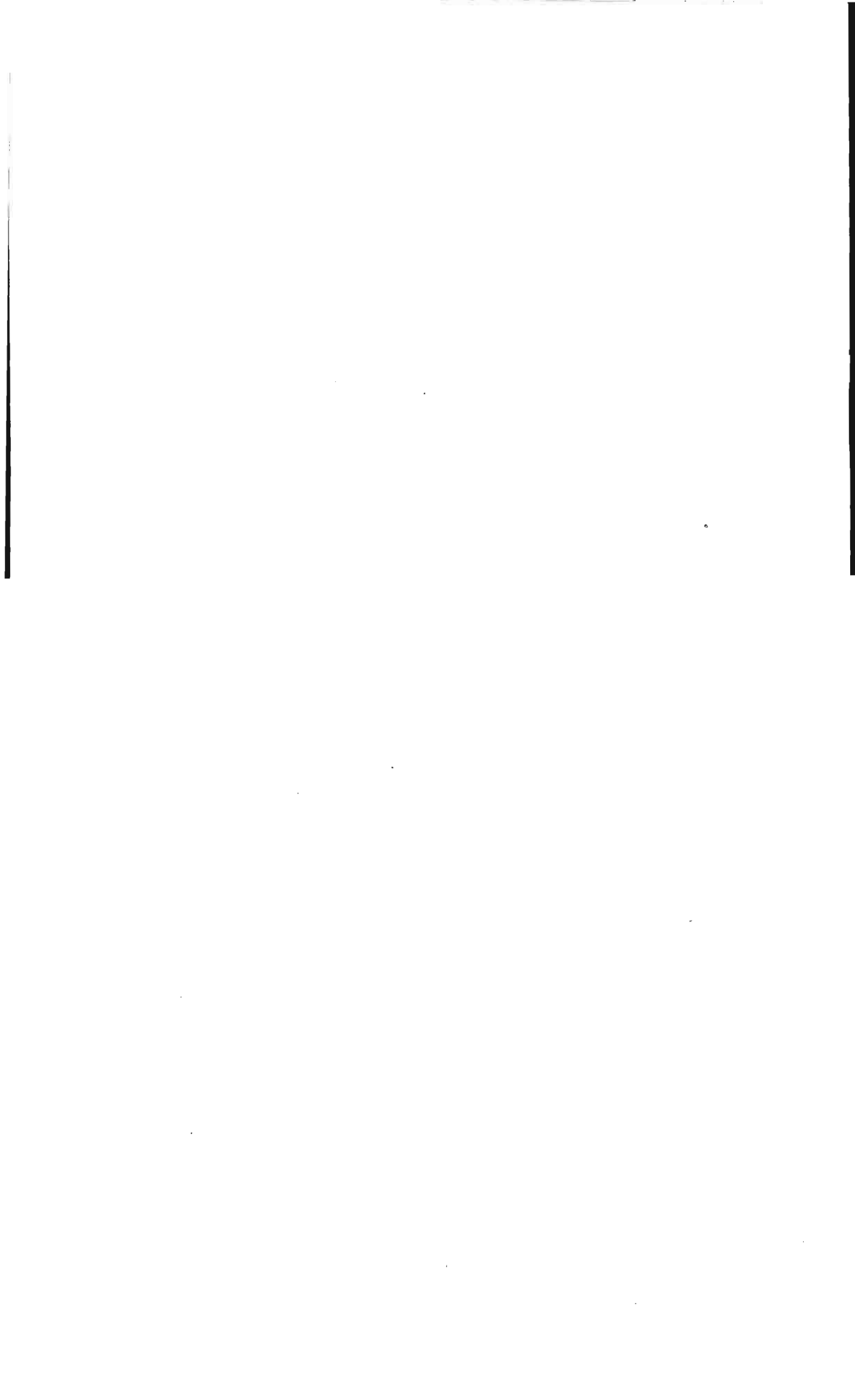
Considering the whole structure of section 21, it in substance imposes a tax upon the working of a mine. It is quite true that the section in terms declares that it is a tax on a company owning lands, whether they mine or not, but if they do not mine the tax is a fixed annual payment of 50 dollars; while, if they do, the tax is levied according to the wage bill of the company, and proceeds on an *ad valorem* scale, rising with the payment of these wages up to, but not exceeding, 500 dollars. If the 50 dollars can be regarded as a fixed tax upon the land, the remainder of the tax is only payable in the event of the mine being worked, and depends for its amount on the extent of the mining operations.

In their Lordships' opinion sub-section 3 is intended to exempt the mining company from any similar taxation. It is quite possible that power to impose such taxation is conferred by section 5735 of the Cities and Towns Act, which was expressly incorporated in the Statute of 5 Edw. VII, cap. 48, but, even if it were not, the section is intended to protect the company from a double tax on mining operations, however imposed. A tax, if imposed selectively upon mines, would be, in their Lordships' opinion, a special tax, for, in the absence of any definition of a special tax, such a tax would be either a tax levied generally on all property for a special purpose, such as the tax in question, or a tax on a special industry levied either for special or general purposes. It may not be easy to define exactly the line which will separate in all cases a special from a general tax. It is sufficient to say that a tax may be special either by reason of the object for which it is levied or the subject out of which it is raised. In the present case there is no doubt that the tax is a special tax by reason of the purpose for which it is imposed, and it is declared to be so by the by-law by which it was authorised. Their Lordships think, however, that the sub-section must be read not as meaning a special tax by reason of the purposes to which it is to be applied, but as a tax specially laid

upon mining operations, and this condition the present tax certainly does not fulfil. Apart, however, from this conclusion, their Lordships still think that the respondents would be liable. It is urged on their behalf that the sub-section might be read as though it provided that companies shall, in respect of their mining operations, be exempt from any special tax, under whatever category the special tax might fall. Even conceding this, there would still remain the question as to whether it is in respect of the mining operations that the tax has been levied. In this connection, their Lordships can draw no distinction between the land and the machinery and buildings which stand upon it. They are, taken together, the necessary property that must be owned for the purpose of mining, but there is no reason why a difference should be made between the land, on the one hand, and the buildings and the machinery on the other. They are all equally immovable property, and if one part must be exempt the other must be also. Now the respondents do not challenge the tax upon the real property, apart from the buildings and machinery, nor if they did would their challenge be effectual, for such an argument would result in saying that the mining company in respect to its mining property should be exempted from the special tax. These are not the words used, nor are they their equivalent in meaning. It is the use and purpose to which the property is put which constitutes the mining operations, and it is not this upon which the general tax has been placed.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, that the judgment of the Court of King's Bench should be set aside with costs and the judgment of the Superior Court restored.

The respondents will pay the costs of this appeal.



In the Privy Council.

LA CORPORATION DE LA VILLE DE
THETFORD MINES

o.

AMALGAMATED ASBESTOS CORPORA-
TION (LIMITED).

DELIVERED BY
THE LORD CHANCELLOR.

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