LA CONGRÉGATION DU TRÈS SAINT RÉDEMPTEUR (DEFENDANT)..... } APPELLANT;

AND

THE SCHOOL TRUSTEES FOR THE MUNICIPALITY OF THE TOWN OF AYLMER (PLAINTIFFS)..... } RESPONDENTS.

1944
*Nov. 8, 9, 10
1945
*Mar. 23
*Apr. 24, 25
26
*June 22

School law—Assessment and taxation—Building of a dissentient school—Borrowing of moneys by trustees— Bonds or debentures issued—Resolution adopted by Trustees under section 244 of the Education Act— Stipulating that a special tax "shall be levied annually"—Whether wording of resolution sufficient to create a tax—Whether resolution otherwise legal and regular—Privilege on immovable for school assessment—Property owned by dissentient when taxed and later sold to a Roman Catholic—Scope of the tax exemption granted to religious corporations under sections 251 (3) and 424—Issue of bonds or debentures authorized under section 246—Whether both the bonds or debentures and the resolution providing for their issue are validated thereby —The Education Act, R.S.Q., 1925, c. 133, now R.S.Q., 1941, c. 59.

The respondents trustees, in 1925, passed a resolution to borrow a sum of $25,000 through an issue of bonds or debentures payable in thirty years, the purpose of the loan being the rebuilding of a school recently destroyed by fire. The resolution stipulated *inter alia* that "to provide for the annual interest and sinking fund of these debentures, a special tax * * * shall be levied annually upon all taxable property on the collection roll of the school trustees of this municipality at present in force * * * and on any other taxable property that may come under the control of the said school trustees during the term of these debentures; and all lands subject to the said tax now entered on the said roll * * * shall be bound and liable for the special tax, until the full and final payment and discharge of the said debt." At the time the resolution was adopted, the property, on which it is claimed special taxes are due, belonged to one Wright, a dissentient, subject to the jurisdiction of the respondents. In 1937, the property was sold to the appellant, a Roman Catholic institution, exempt from the payment of school assessments by force of sections 251 (3) and 424 of the *Education Act*. In 1938, 1939 and 1940, the respondents trustees passed resolutions by which the appellant's property was assessed at $51.91, $52.09 and $904.47, the increase in the last assessment being the result of improvements and the construction of buildings for an amount exceeding $500,000. In 1941, the respondents brought against the appellant an hypothecary action for $1,016, respresenting the above mentioned assessments and interest. The Superior Court dismissed the action; but the appellate court reversed that judgment and maintained the action as brought.

*PRESENT.—Rinfret C.J. and Hudson, Taschereau, Rand and Estey JJ.

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On the appeal before this Court:

The Chief Justice and Taschereau J. were of the opinion that the appeal should be allowed in full, Hudson and Estey JJ. were of the opinion that the appeal should be dismissed and Rand J. was of the opinion that the respondents trustees were entitled to succeed, in part, in their action. As a result, it was

Held that the appeal should be allowed in part and the judgment of the appellate court be modified so that the amount of the taxes awarded to the respondents be reduced to accord with the value of the property as it appeared on the valuation and collection rolls in force in 1925.

Per The Chief Justice: The respondents' action is an hypothecary action, i.e. an action to enforce an alleged hypothec or privilege, and they have failed to show that the resolution of 1925, nearly all of its clauses being illegal and *ultra vires,* was effective for the purpose of creating a privilege upon the immovable property then owned by Wright, which privilege would have followed the property into the hands of the appellant.

Per The Chief Justice and Taschereau and Estey JJ: The resolution of 1925 was not passed in conformity with the imperative provisions of sections 244 (1) of the *Education Act.* Under that section, "no issue of bonds may be made * * * unless * * * there be imposed * * * an annual tax * * *." The resolution does not impose a tax immediately: it only states that a tax shall be imposed each year: "shall be levied annually." A resolution providing for the imposition of a tax in the future does not meet the requirements of that section and is ineffective to operate a valid issue of bonds. *The School Commissioners of St. Adelphe* v. *Charest* ([1944] S.C.R. 391) followed.

Per Estey J: Such contention would have been available to the appellant, if it had been made before the approval of the resolution by order in council under section 246, the existence of this approval distinguishing this case from the above decision. (Section 246 is further commented below.)

Per Hudson J.: The principle of that decision is not applicable to this case: in the *Charest* case, there was no definite imposition but rather a promise to do so in the future, while, in this case, there was an immediate burden imposed to be satisfied in a definite way; moreover, there was not in that case an issue and sale of bonds approved by order in council under section 246.

Per Rand J.: Although, in the resolution, there is no express imposition and the future tense is used in the expression "shall be levied", the paragraph providing for the taxation should nevertheless be read to imply in fact a present imposition sufficient for the purposes of section 244. The rule of the *Charest* case should not be extended beyond the precise words that were there dealt with.

Per The Chief Justice: The resolution of 1925 declared that the "special tax * * * shall be levied annually upon all taxable property on the collection roll * * * at present in force." The appellant's action was not based upon the collection roll of 1925-1926 and the amounts for

which the Trustees claimed a privilege result from the collection rolls of 1938-1939-1940, at a time when the appellant's property was not taxable. The respondents' claim is therefore contrary to the text of the 1925 resolution.

Per The Chief Justice: The 1925 resolution cannot be reconciled with subsection (3) of section 244. The valuation of the property having been fixed once and for all on the collection roll of 1925, it would be contrary to the text of the resolution, and therefore illegal, for the secretary-treasurer to assess that property for a different amount in collection rolls prepared by him under instructions given to him by subsequent resolutions.—The resolution contains also another illegality: there is no provision, either in the *Education Act* or in the Civil Code, which authorizes the creation of a privilege upon future property.

Per The Chief Justice and Taschereau J.: The privilege for school assessments is not immediately created at the time of the adoption of the loan resolution, but comes into existence only after the collection roll comes into force. *Per* The Chief Justice: Such privilege, at the time it thus comes into existence, cannot be related back to the date of the original resolution, at least so far as the privilege or hypothecary claim is concerned.

Per Hudson J.: The language of the 1925 resolution is clear and definite. The property therein described was "bound and liable for the special tax (in each year) until the * * * final payment of the debt." The levy sought by the present action is merely the maturing of the tax obligation imposed by the original resolution. The charge operates from the time the bonds are sold until they are finally paid in full. The purchasers of the bonds relied on the terms of the resolution and subsequent purchasers took with implied or express notice of them. Any withdrawal of property from the taxable area so defined would throw on the remaining properties a greater burden than was assumed by the property owners when the resolution was passed and it would deprive the bond holders of security assured to them when they bought the bonds. Under the circumstances, the Court would not be justified in refusing to give effect to the resolution unless compelled to do so by clear and definite mandate.

Per Taschereau J.: There must be necessarily a personal debtor bound to pay a tax. It cannot be conceived that a tax imposed solely on an immovable could exist without a person having the legal obligation to pay it and against whom it could be legally claimed. Personal liability is from the beginning fastened on the owner of the immovable, because he is then under the jurisdiction of the school commissioners or trustees and the immovable is taxable because he owns it. Such personal liability ceased to exist when the owner originally liable has sold the property "in respect of which" he has been taxed; the liability is then incumbent on the purchaser, whatever his religion may be.

Per Estey J.: The school tax is primarily a property tax, but the *Education Act,* when read as a whole, contemplates a personal liability upon the owner. Therefore there would be a personal liability within the meaning of the Act upon the appellant.

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Per Taschereau J.: When a tax is "imposed" by virtue of a loan resolution under section 244, the immovables subjected to the jurisdiction of the Trustees are from that time determined in advance as bound to be later charged with a privilege for the annual tax in consequence of the combined effect of the original resolution and of the collection roll duly homologated, and such immovables cannot be withdrawn from the payment of the tax notwithstanding the fact that they become the property of another person and even if the latter is entitled to the exemption granted by the *Education Act*.

Per Taschereau and Estey JJ.: The religious communities cannot claim the exemption granted to them by sections 251 (3) and 424, if they were not owners of the immovable at the time the tax has been originally imposed.

Per Rand J.: The language of section 244 should be constructed to mean that an "annual tax",—annual in relation to the years of the terms, for instance, of a bond issue—, carrying inplicitly the characteristic of a specific amount in relation to each separate parcel of land is declared, and that it is *en marche* to become definitive as a realizable exaction as each year is reached, and as it is extended on a collection roll. It is as if the resolution in 1925 were in the words: a tax of $30 on property "A" is now imposed for the year 1940, and as if it were repeated in 1940. An annual resolution is passed in advance: it describes a taxing effect to be attained in future. But the declaration of a potential tax in a certain amount in respect of each taxable immovable for each year during the currency of the obligation, as a specific imposition, can be made only by reference to the valuation or assessment roll, at the time of the resolution, in force. When the tax becomes levied in each year as the collection roll is completed, the time of payment is determined, but whether there is determined also personal liability for each year's tax, there is no need to enquire. The resolution, then, fixes as of its date the amount of the annual levy, the lands to be taxed, and the property valuations. Section 391 provides for the homologation of the collection roll, and after the period for payment has expired the taxes become a special hypothecary charge upon the property taxed. Even if that section does not apply to a special assessment, the taxes, upon default of payment, would become a privilege upon the immovables under article 2009 and 2011 of the Civil Code.

An order in council was passed, in pursuance of section 246 of the *Education Act*, stating that the Minister of Municipal Affairs had reported favourably that the Trustees be authorized to borrow moneys in conformity with the resolution of 1925, that all the formalities required by the law had been fulfilled and that accordingly authorization to borrow should be granted. Section 246 enacts that "every bond or debenture issued in virtue of a resolution (so) approved * * * shall be valid, and its validity shall not be contested for any reason whatsoever".

Held that, under that section, not only the bond or debenture is validated, but the resolution providing for their issue must also be deemed to have been passed in conformity with section 244. The Chief Justice and Taschereau J. *contra*.

Per The Chief Justice and Taschereau J.: The intention of the legislature in enacting section 246 has been to put the validity of the bonds and debentures beyond all discussion so that the bondholders would have an absolute guarantee of the legality of the bond itself, notwithstanding the invalidity or illegality of the proceedings leading to its issue. But the section cannot be invoked in favour of a resolution which would be null and void. Any issue that may arise between the Commissioners or the Trustees and a ratepayer is in no way affected thereby. Otherwise the result would be that the Lieutenant Governor in Council would be made a judge of the validity and legality of all the loan resolutions adopted by the former and that the courts would be entirely ousted of their jurisdiction in the matter.

Per Hudson J.: The prohibition against the issue of bonds, in section 244 (1), ceased to have any application here once the resolution to borrow had been approved as being adequate for the purposes of the section and the bonds certified, as they were, under section 246. When sold they created a legal obligation. The resolution and the order in council were duly registered. The purchasers of bonds were entitled to accept the certificates as conclusive. The appellant itself cannot complain of lack of notice when it bought the property.

Per Rand J.: The bonds in this case, bearing the requisite certificate are admittedly valid, but there is created under section 246 more than a valid debt. The whole object of the section is to conclude such questions as those in the present case. The purchaser of a bond is entitled to the security he would have had if every preliminary or conditional step had been taken in exact accordance with the provisions of the statute and the purchaser cannot be told later that the condition essential to that validity did not in fact or in law exist. The special assessment is for the sole benefit of the bondholders. They are the beneficiaries of that power to tax and the sufficiency of the resolution must be deemed concluded not only in relation to the bond as a debt, but also to the taxation intended to be appropriated exclusively to the payment of that debt.

Per Estey J.: The language used by the legislature in enacting section 246 is clear and definite and, when read and construed with the other relevant sections of the Act and particularly section 244, its meaning is that the approval therein provided for applies to the validity of the resolution and includes both the validity of the bonds and the existence of the security.

Comments upon the decision of this Court in *Canadian Allis-Chalmers Limited* v. *The City of Lachine* ([1934] S.C.R. 445).

APPEAL from the judgment of the Court of King's Bench, Appeal Side, province of Quebec, reversing the judgment of the Superior Court, Trahan J. (1) and maintaining the respondents' action.

(1) [1943] R.L. N.S. 186.

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The material facts of the case and the questions in issue are stated in the above head-note and in the judgments now reported.

Fernand Choquette K.C. and *Eugène Marquis K.C.* for the appellant.

John A. Aylen K.C. for the respondents.

THE CHIEF JUSTICE.—This is an hypothecary action, that is to say, an action to enforce an alleged hypothec or privilege. It means, therefore, that the respondents were bound to show that, in the premises, a privilege has been created upon the immoveable property of the appellant as a charge for the payment of certain special taxes imposed by the respondents in connection with a loan by means of an issue of bonds under a resolution adopted by the respondents on the 19th of August, 1925.

At the time when the resolution was adopted the property, on which it is claimed a privilege exists, belonged to one R. H. Wright, a dissentient, subject to the jurisdiction of the respondents. Later the appellant acquired the property from Mr. Wright and, at the material dates, it was the owner in possession of the property in question. The price of the sale from Wright to the appellant was $22,925, but, as a result of improvements and the construction of buildings, the total value of the property in 1940 had reached the sum of $500,000.

It is admitted that the appellant is exempt from the payment of school assessments by force of section 251 of *The Education Act* (Chap. 133 of R.S.Q. 1925, as amended).

The Superior Court dismissed the respondents' action, but the Court of King's Bench (Appeal Side) reversed that judgment and maintained the action as brought.

The point at issue is whether the resolution of the 19th of August, 1925 has immediately affected by privilege for the amount of the special tax the property then be-

longing to Wright in such a way that the appellant who purchased it now holds the property subject to the alleged privilege.

Some subsidiary points were raised at the argument as to the right of the respondents to bring action for the purposes herein, and also as to whether, if the privilege is held to exist, it extends to the improvements and new buildings added by the appellant to the property purchased from Wright, but, in the view I take of the litigation, these subsidiary points are immaterial.

With regard to this last point concerning the improvements and additional buildings, it is sufficient to say that a privilege, as clearly stated in article 2017 of the Civil Code, being only an accessory and subsisting no longer than the obligation which it secures, necessarily requires the existence of a third party as debtor of the personal obligation. In the present case, as it is impossible under the law that the appellant could be the personal debtor, it follows that Mr. Wright, or his successors, must be the personal debtor, and it is hardly to be suggested that the latter's personal debt could have been increased as a consequence of the construction and improvements made by the appellant.

We have in the record the collection rolls respectively for the year 1926, immediately following the adoption of the resolution, and for the years 1938, 1939 and 1940, upon which the present claim of the respondents is based. In 1926 all the properties belonging to Wright appeared on the roll as being valued at about $47,000, and it is not certain that this valuation includes certain properties of Wright which he did not sell to the appellant. At that time the total special tax assessed against Wright for the year ending on the 30th June, 1926 amounted only to $69.92, while the tax which is now claimed hypothecarily from the appellant for the years 1938, 1939 and 1940 amounts to $1,016, being $51.91 for the year 1938 and $52.09 for the year 1939, the improvements and constructions not having been then made on the property, and $904.47 for the year 1940, after the improvements and constructions were made.

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One can only surmise what would be the surprise of Mr. Wright, or of his successors, if the respondents proceeded to claim from him or from them, as a personal obligation, the sum of $904.47, which represents the special tax for 1940. It is not likely that he or they could be called upon to pay such a sum; and, if the personal obligation for that sum of $904.47 does not exist against Wright or his heirs, it cannot be pretended that the accessory privilege can exist for that sum on the property of the appellant as security for a personal obligation which has no existence. One need only suggest the objection to show that it repudiates itself.

The present action stands to be decided not on what the Trustees might have done under *The Education Act*, but upon what they have in fact done. This Court is not called upon to give an opinion upon the relevant sections of *The Education Act*, but upon the proceedings and resolutions that the respondents adopted for the purpose of the loan. We have only to decide whether the resolutions which are now before us were effective for the purpose of creating a privilege on Wright's property, which privilege followed the property when it came into the hands of the appellant. With respect, that is precisely what appears to have been lost sight of in the judgment from which the appeal is brought to this Court.

The resolution of the 19th of August, 1925, begins by stating that the Trustees have decided to petition His Honour, the Lieutenant Governor of Quebec, to grant to them authorization to borrow the sum of $25,000, said amount to be secured by an issue of debentures payable thirty years from the first day of September, 1925, such debentures to bear interest at the rate of five per centum per annum, payable half yearly on the first day of March and September in each year, and to be of the denomination of $500 each, there being attached to each debenture coupons for the amount of each payment of interest and to be made payable at the Royal Bank of Canada in Aylmer, Que. Then comes the important clause, which must be reproduced in full in view of the fact that the whole contention of the Trustees relied on it:—

> To provide for the annual interest and sinking fund of these debentures, a special tax, sufficient for the payment of interest and sinking fund, as hereinafter provided, shall be levied annually upon all taxable

property on the collection roll of the school trustees of this municipality at present in force, and on the said school trustees proportion of all taxable property belonging to incorporated companies, and on any other taxable property that may come under the control of the said school trustees during the term of these debentures; and all lands subject to the said tax now entered on the said rolls, together with the buildings and improvements thereon made or erected or which may be made or erected thereon during the term of these debentures, shall be bound and liable for the said special tax, until the full and final payment and discharge of the said debt.

To provide for the payment of these debentures when due, a sinking fund shall be provided in which shall be deposited each year and shall remain deposited with accrued interest during the term of these debentures, an amount of $2\frac{1}{10}$ per cent. of the amount of debentures sold.

The first point to be noticed about the above clause is that, contrary to the imperative provisions of section 244, subsection (1), of *The Education Act,* there is not in that resolution imposed upon the taxable property held for the payment of the loan an annual tax sufficient for the payment of the interest each year and at least one per cent. of the amount of the loan, besides the interest, to create a sinking-fund for the extinction of the debt. The resolution states:—

A special tax * * * shall be levied annually * * *

The decision with respect to the tax is expressed in the future. It does not impose a tax immediately; it only states that a tax shall later be provided for—"shall be levied annually". That is very clear; the imposition will be made only each year in the future. Moreover, according to the text of the resolution, the special tax shall be levied annually upon the taxable property on the collection roll "at present in force". Further, the special tax shall be levied annually not only on the taxable property then under the jurisdiction of the Trustees, but also

on any other taxable property that may come under the control of the said school trustees during the term of these debentures * * * until the full and final payment and discharge of the said debt.

Now the present action is not based upon the collection roll of 1925-1926. The amounts for which the Trustees claimed a privilege on the appellant's property result from the collection rolls of 1938-1939-1940. That alone would be sufficient to declare that the respondent's claim is irregular and illegal and contrary to the very text of the resolution of 1925; but the fundamental illegality is evidently that the resolution of 1925 was not adopted in con-

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formity with section 244, subsection (1), of *The Education Act*. On that point this Court is bound by its own judgment in the case of *The School Commissioners of St. Adelphe* v. *Charest and Douville* (1), where it was decided that a resolution in similar terms, that is to say, providing for the imposition of a tax only in the future, does not meet the requirements of section 244 and is ineffective to operate a valid issue of bonds. That is what the Court of King's Bench (Appeal Side) of Quebec decided in that case (2) and which was affirmed in this Court.

The learned counsel for the respondents, notwithstanding his ingenious argument, has not succeeded in convincing me that any distinction whatever can be made between the *St. Adelphe* case (1) and the present case.

But, in addition to this fundamental illegality, the 1925 resolution contains many other illegalities, *inter alia:* First, it is impossible to reconcile that resolution with subsection (3) of section 244. That subsection enacts that:—

> It shall be the duty of the Secretary-Treasurer to make, every year until the payment of the loan or the redemption of the bonds, a special collection roll, apportioning, upon the taxable immoveable property liable for the payment of such loan or such bonds, the amount of the tax imposed on each one for the payment of the interest and the annual payment into the sinking-fund.

It has already been pointed out that the resolution stipulates that the special tax shall be levied annually upon all taxable property on the collection roll "at present in force". Incidentally, that appears to me to be the intention of the law expressed in subsection (1) of section 244. But, in such a case, the valuation of the taxable property held for the payment of the debentures being fixed, once and for all, as it appears on the collection roll of 1925, it would evidently be contrary to the text of the resolution and, therefore, illegal for the Secretary-Treasurer to make each year a new collection roll assessing against the taxable immoveable property liable for the payment of the loan a different amount based on the collection roll of each of those years. One can see in the present case the anomalous result of such a practice. While Mr. Wright's special tax in 1925 amounted to $69.92, it is now claimed by the respondents, as a result

(1) [1944] S.C.R. 391. (2) Q.R. [1943] K.B. 504.

of the collection roll of 1940, that Mr. Wright's personal obligation would amount for that year alone to the extraordinary sum of $904.47; and, of course, the consequence of such a contention is that the privilege now sought to be enforced against the appellant's property instead of being only $69.92 is $904.47 for the year 1940.

It may be that subsection (3) of section 244 is incompatible with the true construction to be put on subsection (1). It is not easy to reconcile subsections (1) and (3) of section 244, for, if subsection (1) be interpreted in the sense that seems to be not only likely but imperative, the result would be that subsection (3) is merely surplusage and that, in order to conform with the requirements of subsection (1) (and incidentally to the clear provision of the 1925 resolution) the special collection roll could only be and ought to have been a mere repetition from year to year until the payment of the loan or the redemption of the bonds. Instead of that, we have here collection rolls assessing varying amounts for the years 1938, 1939 and 1940, which are made the bases of the action and which in each case are different from the amount appearing on the collection roll of 1926. That is contrary to the provisions of the 1925 resolution; and, moreover, it shows beyond doubt that the claim of the respondent is not based on the resolution of 1925 but is necessarily based on the resolutions of the years 1938, 1939 and 1940.

All that the Secretary-Treasurer of the respondents had to do in order to obey the instructions contained in the resolution of 1925 was to repeat each year in the collection roll prepared by him, against each property liable for the payment of the loan, the amount fixed in 1925 and based on the valuation roll of that year. He did not require any fresh permission or order from the Trustees to act in such a way. Subsection (3) made it his "duty" without it being necessary that he should receive new instructions to that effect.

But such was not the method adopted by the respondents. Each of the resolutions adopted by them, and alleged in the declaration in the present case, on the 6th December, 1938, the 13th November, 1939, and on the 26th November, 1940, confirms the interpretation now given to

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the resolution of 1925, and which is that no tax was actually imposed in 1925, that the resolution contains only the expression of the intention to impose a tax later, that the imposition so levied was in fact made only in each year, as appears from the resolutions of 1938, 1939 and 1940, and that indeed the Trustees in this case proceeded exactly in the manner referred to by this Court in its judgment in the *St. Adelphe* case (1). In 1925: a declaration of the intention to impose a tax later; and then each subsequent year a resolution imposing a tax, as is more particularly evident in the resolutions of 1938, 1939 and 1940. However, in these later resolutions the Trustees did not limit themselves to giving instructions to their Secretary-Treasurer to prepare a special collection roll in conformity with the resolution of 1925; they actually imposed a tax for each year, as is well shown by the text of the resolutions themselves, as follows:—

December 6th, 1938.

That a tax rate of 10 mills on Aylmer property, and 6½ mills on South Hull Township property be and is hereby levied on all property under the control of the School Trustees, as a general tax for the year 1938-39 and a special tax rate of 1¾ mills be levied on all properties on which we are entitled to collect for the year 1938-39 and also that a discount of 5 per cent. be allowed on all current general school taxes paid on or before January 31st, 1939.

November 13th, 1939.

That a tax rate of 10 mills on the Aylmer property on our collection roll and a tax rate of 6½ mills on our portion of South Hull Township be and is hereby imposed on all property under our control as a general school tax and a special tax rate of 1¾ mills be imposed on our whole school district for the year 1939-40, also that a discount of 5 per cent. be allowed on all current general school taxes paid on or before January 31st, 1940.

November 26th, 1940.

That a tax rate of 10 mills on Town of Aylmer and 6½ mills on our portion of South Hull Township be and is hereby imposed as a general tax on the property under our control for the year 1940-41 and a special tax rate of 1¾ mills be imposed on our whole district for the same year. Also that a discount of 5 per cent. be allowed on current general taxes paid before January 31st, 1941.

There is really no difference in the text of these three resolutions. In 1938 the Trustees used the word "levy", while in 1939 and 1940 they used the word "impose". No doubt the Trustees were of the opinion that the two words are synonymous, or at all events that they have the same effect. In section (1) of *The Education Act*, subsections

(1) [1944] S.C.R. 391.

(17) and (18), the words "school tax", or "tax", are defined as meaning "all contributions that may be levied in virtue of this Act", and the words "school assessment" as meaning "the tax which is levied on the taxable property of a school municipality". In the French version of the Act, in subsections (17) and (18) of section (1), the word "imposé" is used for the word "levy" in the English version. On the other hand, section 244 uses the word "imposé" in French and the word "impose" in English in subsection (1) as well as in subsection (3). In section 249 the word "imposé" in French is inserted as the equivalent of the word "levy" in English; and, if one goes through the several sections of the Act, it will be seen that the words "impose" and "levy" are used interchangeably, as well as the words "tax" and "assessment". It is clear, therefore, that the respondent Trustees have really, in each of the years 1938, 1939, and 1940, in order to provide for the payment of the interest and for the sinking-fund in each of those years, as provided for in section 244, imposed or levied a special tax which was only then and there imposed or levied and which was not imposed or levied in 1925. That is the only interpretation which must be given to all those resolutions; that the special tax for which a privilege is now sought to be enforced against the appellant by means of the present hypothecary action was actually imposed in 1938, 1939 and 1940. It is clear that the resolution of 1925 and the three subsequent resolutions cannot exist concurrently and at the same time. The evident intention of the three last resolutions was to complete that of 1925 and that is exactly what is suggested in the judgment of this Court in the *St. Adelphe* case (1). It is only in the three resolutions of 1938, 1939 and 1940 that the Secretary-Treasurer could find the authority to prepare the collection rolls which are made the bases of the present action.

Unfortunately, the illegality of the respondent Trustees' resolutions does not stop there. The 1925 resolution enacts that the immovable properties which are to be held for the payment of the loan are those which appear on the collection roll then in force; and, while the resolution of 1938 is ambiguous in that it states that

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a special tax is levied on all properties on which we are entitled to collect for the year 1938-39,

those of November, 1939 and November, 1940, pretend to impose the special tax "on our whole school district for the year 1939-40" and "on our whole district for the same year" (i.e., 1940-41). Therefore, the resolutions of 1939-40 make the imposition on all the properties which then formed part of the respondents' school district, and that is directly opposite to what was done in the resolution of 1925. In that respect it is impossible to reconcile the two last resolutions with that of 1925. They cannot co-exist because they are contradictory, and the two last resolutions can be held as valid only if they are envisaged as having amended the resolution of 1925. Now, the only authority of the Secretary-Treasurer to prepare the collection rolls for the years 1939-40 and 1940-41, as he has done, can be found only in the resolutions of 1939-40, which brings us to the following dilemma: either the 1925 resolution has really been amended, as just stated, and, therefore, the respondents have illegally modified the bases of the collection of taxes providing for the interest and the sinking-fund of the loan of 1925, or the resolutions of 1939-40 have illegally imposed a personal tax against the appellant which is exempt from taxation.

In the first case, the procedure adopted by the respondents is contrary to the imperative provisions of sections 242 and 244 of *The Education Act,* for the resolution of 1925 alone has been adopted with the authorization of the Provincial Secretary and the approval of the Minister of Municipal Affairs, Trade and Commerce. It follows that the Trustees had no authority whatever to modify it.

Or, in the second case, the Trustees, in 1939-40, proceeded in virtue of the new resolutions which then and there imposed the special tax, and these two resolutions are doubly inoperative both from the general point of view because they had not received the previous authorization of the Provincial Secretary or the approval of the Lieutenant Governor in Council, or of the Minister of Municipal Affairs, Trade and Commerce; and, moreover, from the particular point of view of the appellant because at the

time the tax was then and there imposed the appellant was exempt from taxation and no imposition could validly be made against it.

Furthermore, the 1925 resolution contains another illegality resulting from the fact that it pretends to impose

> a special tax * * * on any other taxable property that may come under the control of the said school trustees during the term of these debentures.

There is no provision, either in *The Education Act* or in the Civil Code of the province of Quebec, which authorizes the creation of a privilege upon future properties, or properties that may come in.

The conclusion is that the so-called resolution of 1925 is illegal and *ultra vires* from beginning to end, and that is the resolution on which the respondents now pretend to base their claim against the appellant.

Indeed the respondents press their contention much further. They would like the Court, notwithstanding all these illegalities, to regard these illegal and *ultra vires* clauses of the resolution as if they did not exist, as if they had never been inserted therein, and to proceed to apply the resolution as if it contained only the clauses which are not tainted with illegality and absence of authority. That would really be an absolute novelty in the jurisprudence of the province of Quebec. All that the Courts would have to do would be to strike out what is illegal and *ultra vires* and to hold the balance of the resolution as being the true resolution which the respondents adopted and which they would now have the right to use as the basis of their hypothecary claim.

The first difficulty which comes to the mind to prevent the courts from adopting that point of view is that, when everything that is illegal and *ultra vires* is withdrawn from the 1925 resolution, there is nothing left. Moreover, I would be very much surprised if there could be found in the Quebec jurisprudence a single case where a resolution thus tainted with illegality and want of authority, even only in part, was held to be valid for those parts of it which were not found illegal and *ultra vires*.

Then the Trustees adopted the resolution, as is found in the record, with the conditions therein inserted; and it cannot be assumed that they would have adopted it if

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these conditions had been eliminated therefrom. In addition to that, they proceeded contrary to the intention expressed in the resolution of 1925, since in 1939-40 they ordered their Secretary-Treasurer to prepare a collection roll affecting not only the properties which were under their jurisdiction in 1925 but equally all those which were under their jurisdiction in 1939 and 1940 ("imposed on our whole school district"). I find it absolutely impossible to admit that such a resolution and such a proceeding can justify a claim for a tax against the appellant, and still less an hypothecary action.

The charge, hypothec, or privilege may result only, as stated in section 249 of *The Education Act,* from an assessment which specifically designates the immoveable property assessed, which fixes the amount of the tax, and which becomes a special charge only as a result of the failure to pay within twenty days following the homologation of the collection roll: and section 249 is the only section to be found in *The Education Act* providing for the creation of a special hypothecary charge upon any property. If it cannot be found there, it does not exist under *The Education Act;* while, if recourse is had to the Civil Code, the privilege for school rates exists only in conformity with article 2011, and in that case the assessment and rates become privileged only "upon the immoveable specially assessed", and the provisions of that article are imperative. They constitute a principle from which the Civil Law has never departed.

Now, in this case, the conditions required by section 249 of *The Education Act* have not been followed, and if we look at the resolutions of 1938, 1939 and 1940, and apply section 249, then the privilege took effect only twenty days after the collection roll in each of those years came into force; or, if we have recourse to article 2011 of the Civil Code, the property of the appellant was "specially assessed" only from the moment that these collection rolls became applicable. Whatever date is chosen, the appellant was then exempt from school tax and any pretended imposition or levy against it was inoperative.

Of course, as suggested by the learned counsel for the respondents, it may be that we are confronted here with

a *casus omissus* and that neither *The Education Act* nor the Civil Code provides for such a case. However, I fail to see what benefit the respondents could obtain from that situation, because a hypothec or privilege may be created only as a result of a convention, or by the operation of law. Here there was no convention, and, if the law did not forsee the case, no privilege can exist. Therefore, the whole sub-stratum of the respondents' action is completely absent.

At the re-hearing ordered by this Court, counsel for the respondents contended that we need no longer be hampered by the illegalities contained in the resolution of 1925, in view of section 246 of *The Education Act*. That section enacts that every bond or debenture shall bear the seal of the Department of Municipal Affairs, Trade and Commerce and a certificate of the Minister of Municipal Affairs, Trade and Commerce, or any person specially authorized by the latter, establishing that the resolution authorizing the issue of such bond or debenture has been approved by the Lieutenant Governor in Council, or the Minister of Municipal Affairs, Trade and Commerce, as the case may be, and that such bond or debenture is issued in conformity with such resolution, and that such bond

shall be valid and its validity shall not be contested for any reason whatsoever.

Counsel for the respondents invited the Court to draw therefrom the conclusion that as soon as the resolution was approved, as therein stated, not only the bond or debenture is validated but equally the resolution providing for the issue of the bond, and that, although it might have been illegal before, it became legal as a result of the approval. I do not recall that such a construction was ever put on section 246. The intention of the section is simply to validate the bond or debenture and it cannot be invoked in favour of a by-law or a resolution which is illegal, null or void.

Of course, at the re-hearing, our attention was drawn to the fact that there is absolutely no evidence in the record that the bonds issued under the resolution of 1925 bore the seal of the Department of Municipal Affairs and a certificate of the Minister of that Department, or of any

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person specially authorized by the latter. That alone, would be sufficient to dispose of the discussion of the application of section 246 to the present case.

But admitting, for argument's sake, that the bonds or debentures were impressed with the seal and certificate in question, in my view, the present case between the Trustees and one of its alleged ratepayers would in no way be affected thereby. Section 246 is already sufficiently exhorbitant of the common law to prevent the courts from extending its application. That section does not say that the approval by the Lieutenant Governor in Council or the Minister of Municipal Affairs, Trade and Commerce, has the effect of validating the resolution. The words "valid" and "validity" are used therein only in respect of the bond or debenture. The intention of the Legislature clearly appears to have been to put the validity of the bonds and debentures beyond all discussion so that the bond holders would have an absolute guarantee of the legality of the bond itself and so that they would be sure they need not preoccupy themselves with the validity or the legality of the proceedings leading to the issue of the bonds. Indeed it might verily be said that the object of section 246 was to provide precisely for the case where the resolution was illegal and to specify that, notwithstanding the illegality of the resolution, the validity of the bond would not thereby be affected.

If the sole approval by the Lieutenant Governor in Council of the loan resolution had the effect of rendering indisputable the validity of the resolution, it was not necessary to provide specifically for the validity of the bonds issued as a result of that resolution. Therefore, if the resolution was valid and legal there was no object in declaring that the bonds themselves would equally be valid and legal; that followed as a necessary consequence. But it is precisely in order to provide for the case where the resolution might be illegal that the Legislature took the opportunity, to assure the bonds holders, to declare that, notwithstanding the illegal resolution, the bond itself would nevertheless be valid, providing it bore the seal and certificate mentioned in sectiton 246. Otherwise, we would be led to the absurd consequence that the loan resolutions could never

be attacked before the courts, for they imperatively require the authorization and approval of the Lieutenant Governor in Council and the Minister of Municipal Affairs, Trade and Commerce. The result would be that the Lieutenant Governor in Council would be made a judge of the validity and legality of all the loan resolutions adopted by the school commissioners and that the courts would be entirely ousted of their jurisdiction. That question is not raised for the first time. It came before Mr. Justice Demers in the case of *Aubertin* v. *La Corporation du Village du Boulevard St.-Paul* (1) where a municipal by-law, although it had received the approval of the Lieutenant Governor, was declared null on account of the failure to adopt an essential formality.

The same question also came before Mr. Justice Tellier in the case of *Goyer* v. *La Corporation de la Ville St.-Lambert* (2), where the judgment expressly declares that the approval given to an illegal by-law by the Lieutenant Governor in Council has not the effect of making that by-law valid, nor to legalize its carrying into effect by the Municipal Council, and that the law, which validates the bond, may serve as a protection to the bond holder or to the purchaser in good faith of a municipal debenture, but it cannot be invoked in favour of a by-law which is null and void.

No judgment in the province of Quebec can be found to the contrary effect. But there is much more—our own judgment in the case of *Kuchma* v. *The Rural Municipality of Taché* (3). We had to decide a similar case where a municipal by-law, providing for the closing of a road, had received the approval of the Minister under section 473 of the *Municipal Act* of Manitoba (R.S.M. 1940, ch. 141), and the decision of the Court was:—

> Though such a by-law has been approved by the Minister under s. 473 (and notwithstanding that, under s. 473, it "when so approved shall be valid, binding and conclusive, and its validity shall not thereafter be questioned in any court"), the Courts have jurisdiction to pass upon its validity. Section 473 does not authorize the municipality to go beyond its statutory powers, nor permit it to exercise its powers otherwise than in the public interest and in good faith.

(1) (1908) Q.R. 33 S.C. 289
(2) (1920) Q.R. 59 S.C. 232.
(3) [1945] S.C.R. 234.

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In that case, Mr. Justice Estey, speaking for the majority of the Court (The Chief Justice and Hudson, Taschereau and Estey JJ.) said, at p. 239:—

> Any other view would enable the municipal corporation, with the approval of the Municipal Commissioner under sec. 473, to enlarge its powers beyond the express intention of the legislature and in effect to nullify many sections of the same statute. It has always been the function of the courts to pass upon questions of jurisdiction, good faith and public interest, and legislatures pass this and similar legislation in the expectation that the courts will continue to pass upon and determine such questions.

That proposition does not appear to me to warrant any discussion and, moreover, that judgment is binding upon this Court.

But the learned counsel for the respondent would like us to go still further. He does not limit his contention to the proposition that the sole approval by the Lieutenant Governor in Council has the effect of validating the resolution of 1925; he argues that, since such approval has been given, the resolution must be held valid not only in the terms in which it was adopted, but that it should be read as if it had strictly followed the terms and conditions of section 244. The result would be that, from the moment the approval is given, the resolution should be envisaged as amended so as to contain the very text of section 244. This, it is needless to say, is carrying the contention to extreme consequences. Not only would it have the effect of making the Lieutenant Governor in Council final judge of the legality of loan resolutions by school municipalities, but it would give to the Lieutenant Governor in Council the power to amend the resolution so as to make it conform to sections 242 and 244. Without the slightest hesitation I say that such a proposition is absolutely untenable and *The Education Act* itself demonstrates that it is so. There is at the present time in *The Education Act* section 244 (*a*), which permits the Minister of Municipal Affairs, Trade and Commerce, upon the recommendation of the Superintendent, to amend a loan resolution submitted for his approval. But that section was added to the Act only on March 11th, 1926 (16 Geo. V, chap. 41), so that it does not apply to the resolution of the respondents which was adopted in 1925. Moreover, under this new section 244 (*a*), in order that the

Minister of Municipal Affairs, Trade and Commerce, may modify a loan resolution, it is necessary that there should be first a formal application contained in a subsequent resolution of the School Corporation which passed the original resolution on the recommendation of the Superintendent of Public Instruction; and, even on the application of the School Corporation and the recommendation of the Superintendent, the amendments brought in by the Minister may only be made in certain cases well specified in section 244 (*a*). Here there has been no ulterior application on the part of the respondents and no recommendation of the Superintendent of Public Instruction. Besides that, the present litigation does not fall within any of the cases provided for by section 244 (*a*).

Assuming, therefore, that, in the circumstances, the approval of the Lieutenant Governor in Council would lead to the conclusion that the 1925 resolution now has sufficient value to justify the issue of the bonds, it stands to reason that it has not been modified or amended as a consequence of the approval. It remains within the terms in which it was adopted and must continue to be so read; and, if those terms do not come within the requirements of sections 242 and 244 of the Act, conformably to the jurisprudence to which we have referred, the resolution must be held incomplete, insufficient and ineffective to impose immediately a special tax, and *a fortiori* to create a privilege on the properties of the ratepayers which were then subject to the jurisdiction of the respondents. For that reason it would be useless to enter into a discussion of the jurisprudence which has been cited to us so abundantly by counsel for each of the parties in this appeal.

Again, I must repeat that we are not here to decide what may be considered to be the theory of the law in that respect. In each case it is not possible to eliminate the consideration of the text of the resolutions, or by-laws, which have been adopted. It may be that one may find cases more or less similar in the different judgments to which this Court has been referred, but, it is, of course, necessary to make sure that the text of the resolutions, or by-laws, is identical with that of the resolutions, or by-laws, in the other cases which have come before the Courts.

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In the Court of King's Bench (Appeal Side), as well as before this Court, great reliance was placed on the judgment of this Court in *Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1). But it should be noticed that in that case the text of the by-law provided for an immediate imposition of the tax. It read:—

> Une taxe de un et trente-six centièmes de un pour cent est par le présent imposée et sera prélevée sur tous les immeubles imposables de la cité de Lachine suivant leur valeur réelle, telle que portée au rôle d'évaluation en vigueur dans la cité pour pourvoir pour autant, aux dépenses générales d'administration de la cité pour l'année courante et à l'amortissement de sa dette fondée * * *.

As will be seen, the by-law used the present tense. It would, therefore, be idle to attempt to decide the present case by placing reliance on the *Allis-Chalmers* judgment (1), since the by-law in that case was not drafted in the same way as the resolution in the present case.

Moreover, in the *Allis-Chalmers* case (1) the question at issue had no relation whatever to the one we are now discussing. The Allis-Chalmers Co. had been exempt from taxes for twenty-five years. Its properties were not taxable for the whole of those twenty-five years. The by-law of the city of Lachine imposed the taxes therein mentioned

> sur tous les immeubles imposables de la cité de Lachine, suivant leur valeur, réelle, telle que portée au rôle d'évaluation en vigueur.

What was discussed in that case, what we had to ask ourselves, was: Can such a tax, imposed immediately, affect a property which, on the date of the adoption of the by-law, had the benefit of exemption, although such exemption had ceased to exist at the time of the homologation of the collection roll whereby it was sought to collect the tax in question? The question was in order because, at the time of the adoption of the by-law imposing the tax, the exemption was still in force, although it had ceased to exist at the time of the preparation of the collection roll. It seemed decisive in that particular matter, because, under the by-law of the city of Lachine, the tax was imposed on the immovable property then taxable and, at the time the by-law was adopted, the Allis-Chalmers property was not taxable. It followed that the said property did not come within the description of the immovables upon

(1) [1934] S.C.R. 445.

which the tax was imposed. The consequence was that the Allis-Chalmers property not coming within the by-law which imposed the tax, it could not subsequently appear on the collection roll prepared by the Secretary-Treasurer to give effect to the by-law itself.

From all that has been said, the consequence is inevitable that the resolution of the 19th of August, 1925 did not impose a tax nor create a privilege resulting from it on the properties then in the possession of Mr. Wright as owner. It did not impose a tax because it did not say so and also because the resolution itself was illegal, null and void.

That conclusion makes it unnecessary to examine the question so much disputed in the reasons for judgment of the Court of King's Bench (Appeal Side), and also at the hearing before this Court, as to whether, in a matter of this kind, the privilege granted by law to secure such a tax is created immediately as a result of the adoption of the resolution or by-law, or, on the contrary, it is brought into existence only after the collection roll comes into force. On that point it will be sufficient for me to refer to what has been said in the judgment in the *Allis-Chalmers* case (1), always observing that it is never sufficient to limit one's self to the construction of the sections of *The Education Act*, but that, in the end, the effect of the by-law or resolution depends essentially on the particular text in the particular proceedings which the School Commissioners deemed advisable to adopt.

It would not be out of the way, however, to say that the interpretation given in the Court of King's Bench (Appeal Side) to what this Court said in the *Allis-Chalmers* judgment (1) differs *toto cœlo* from the true meaning of our judgment in that case, as a reference to all that was said on that subject in the judgment as reported would abundantly show.

Although, in view of the conclusion at which we arrived in the *Allis-Chalmers* case (1), it was unnecessary to decide the point whether the privilege was immediately created at the time of the adoption of the loan by-law, or whether it came into existence only after the collection roll came

(1) [1934] S.C.R. 445

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into force, we clearly expressed our view that the latter was the true effect of the Quebec law; and, that as a matter of fact, before the coming into force of the collection roll, not only was there no privilege existing as a result of the original by-law, but there was not even a personal obligation on the part of the ratepayer who, in accordance with *The Education Act,* is not called upon to pay anything until within twenty days after the coming into force of the collection roll. Such has always been the jurisprudence of the province of Quebec, and it is strictly in accordance with the text of the law and with the notion of a hypothec or a privilege in the Civil Law of the province. The only exception one could find in the jurisprudence would be possibly the case of *La Communauté des Soeurs des Saints Noms de Jésus et Marie* v. *The Corporation of the Village of Waterloo* (1). To my mind, that case cannot in any way influence our judgment in the premises. In the first place, the question in issue there was really this: When a tax has become a charge on the property, does the fact that such property is subsequently sold to a person or a corporation exempt from taxation have the result of exempting the purchaser of the property from the obligation to pay such a tax, either personally or hypothecarily as holder of the property? That was the sole point involved in the *Waterloo* case (1) and there the Court was not called upon to decide at what time the tax became a charge on the property.

Incidentally, it is only fair to remark that the two by-laws which the Court had to interpret in the *Waterloo* case (1) were not expressed in the future, but constituted an immediate imposition of the tax in the present tense. That case was heard in 1887 and the wording of those by-laws shows clearly that the form which must be given to by-laws of that kind was well known even at that time. No doubt certain expressions of Buchanan J., and of the Court of King's Bench (Appeal Side), in the *Waterloo* case (1) would seem to imply that a tax imposed at the same time as the adoption of the loan by-law creates a hypothec on the taxable property and constitutes a charge upon it from that time. Strictly speaking those expres-

(1) (1887) M.L.R. 4 Q.B. 20.

sions ought to be taken as *obiter dicta*, because the courts in that case, as already mentioned, were not called upon to decide that point. But, if it should be assumed that the *Waterloo* case (1) may be considered as having decided that the privilege is created immediately upon the adoption of the resolution imposing the tax, it is unquestionably the only case in the province of Quebec where that point has ever been decided in that sense. The jurisprudence is all the other way and no other judgment can be found to that effect, while all the judgments rendered in that province have always decided the contrary. It is so much the case that in the present case the Court of King's Bench (Appeal Side) stated that it had always been of the opinion that such a point had been definitely settled in the sense that the privilege was created only as a result of the collection roll coming into force, because only then is the amount which the ratepayer must pay specified and only then is the taxable immovable property specially charged with the tax in accordance with article 2011 of the Civil Code. It is sufficient to read the reasons of the judges of the Court of King's Bench (Appeal Side) to find that that Court came to a different conclusion only on account of the erroneous interpretation which it gave to the judgment of this Court in the *Canadian Allis-Chalmers* case (2), and which led them to a conclusion directly opposite to what we said in that case. In *Les Ecclésiastiques du Séminaire de Saint-Sulpice de Montréal* v. *Masson* (3); *La Compagnie des terrains Dufresne Limitée* v. *Curé et les marguilliers de l'Oeuvre et fabrique de la paroisse de Saint-François d'Assise* (4); *Goulet* v. *Corporation de la Paroisse de St.-Gervais* (5); *Commissaires d'Ecoles de St.-Adelphe* v. *Charest et Douville* (6), and in the *Canadian Allis-Chalmers* case (2) itself, the Court of King's Bench (Appeal Side) always laid down the law as being that the privilege began to exist only from the time that the collection roll came into force. In the latter case see particularly what was said by Chief Justice Tellier and Mr. Justice Rivard. Such was also the opinion of Mr.

(1) (1887) M.L.R. 4 Q.B. 20.
(2) [1934] S.C.R. 445.
(3) (1900) Q.R. 10 K.B. 570.
(4) (1926) Q.R. 41 K.B. 391.
(5) (1930) Q.R. 50 K.B. 513.
(6) Q.R. [1943] K.B. 504.

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Justice Martineau as expressed in his judgment in *Les Commissaires d'Ecoles de Saint-Marie-de-Monnoir* v. *Auclair* (1). More conclusively, as far as this Court is concerned, is the judgment rendered by Sir Elzéar Taschereau in the case of *La Banque Ville Marie* v. *Morrison* (2):—

> C'est là, de la part de l'appelante, soutenir que si son achat eût eu lieu, au lendemain même de cette résolution, et dès avant toute autre procédure, la garantie de l'intimée se serait étendue à cette taxe. Or cette proposition est erronée. Un immeuble n'est taxé en pareil cas, et la corporation n'y a aucun droit, que par la répartition qui établit le privilège, et non seulement son montant. Ou, en d'autres termes, il n'y a pas de privilège, il n'y a pas de taxes, tant que le rôle n'en a pas fixé le montant. La corporation n'a pas de créance contre qui que ce soit, avant la répartition.

That language is quite clear and leaves no doubt whatever on the point we are discussing.

As a final resort, the respondents' counsel contended that it was not open to the appellant to argue against the validity of the loan resolution, or its effectiveness in creating a privilege upon the property of the appellant, because, in the written admissions, paragraph (5), the appellant had conceded

> that plaintiffs (respondents) took the necessary steps to impose said taxes if plaintiffs were entitled to do so, and, in particular, that the resolutions and other proceedings mentioned in paragraphs 2, 3, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the declaration were enacted and passed as alleged in said paragraphs.

But it should be noticed that the admission is "were enacted and passed as alleged in said paragraphs". Paragraphs 2 and 3 of the declaration refer to the initial resolution of the 19th of August, 1925; the other paragraphs refer to the three resolutions of December, 1938 and November 1939 and 1940, and also to the collection rolls subsequently homologated in conformity with those three resolutions. If we refer to those paragraphs it will be found that the respondents nowhere in them alleged that the taxes which are now claimed were imposed by the resolution of 1925. On the contrary, they allege that they were imposed only in 1938, 1939 and 1940. The admission of the appellant must be interpreted as it was made and as a whole. In that sense the words:

> That plaintiffs took the necessary steps to impose said taxes, if plaintiffs were entitled to do so

(1) (1917) 23 R.L. N.S. 485. (2) (1895) 25 Can. S.C.R. 289, at 295.

can have only one meaning and that is that the appellant admitted that the respondents had fulfilled the formalities required as alleged in the paragraphs of the declaration, but it cannot be taken to mean that the resolution of 1925 had immediately imposed a special tax and that such tax was thereupon exigible from Mr. Wright, or that it implied from that moment a privilege on his properties. The resolutions are there and it would not be open to one or the other party to make an admission having the effect of changing the text of them. They must be envisaged according to their tenor and applied in the sense in which they were adopted. To act otherwise would be to permit the parties, or their counsel, to make admissions on the law.

Now, it is a well recognized principle that admissions of a party can only bear on the facts and that no court can be bound by admissions on the law which the parties might pretend to make. (See Demolombe, vol. 30, no. 450; Aubry and Rau, vol. 8, p. 167, sec. 751; Pothier, Obligations, no. 831; Langelier, La Preuve en Matières Civiles et Commerciales, p. 12, art. 25).

It would really be inadmissible that, after all I have said on the way the resolution of 1925 was drafted, and even more particularly after the judgment of this Court in the *St. Adelphe* case (1), this Court would now be called upon to declare that, on account of an admission made by one of the parties and as a result of the expression of his opinion on a question of law, as well as on the legal meaning of the resolutions which we have had to examine in this case, these resolutions have a juridical purport different from that which results from their very text and contrary to the interpretation that this Court has given in its judgment in the *St. Adelphe* case (1). We cannot ascribe to the admissions in question the meaning which the respondents wish us to give to them; and, even if we arrived at the conclusion that such would really be the meaning intended, such an opinion on the legal interpretation to be given to the resolutions which form the basis of the present case could never bind the Court, nor compel it to adopt a juridical conclusion contrary to the Court's own opinion.

(1) [1944] S.C.R. 391.

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The only remaining point about which I think it advisable to make mention is the contention of the respondents' counsel that, even if the privilege comes into existence only after the collection roll is in force, such privilege should then be related back to the date of the original resolution. Whatever may be said on that contention so far as it may apply to the personal obligation, I would say, with due respect, that, so far as the privilege or hypothecary claim is concerned, it is nothing less than legal heresy.

By its very nature, a privilege or hypothec can have effect only from the moment it is created and there can be no relation back. The very idea is repugnant to the notion of privilege or hypothec as understood under the Civil Law of Quebec. Let us just think what it would mean in the present case, where the initial resolution was adopted on the 19th of August, 1925, and the collection roll fixing the amount intended to affect the property came into force only sometime after the 26th of November, 1940. It would mean that what, I suppose, might be called a "potential" hypothec was hanging in the air, like a sword of Damocles, over the property, during that period of fifteen years, and with the possibility that the special tax might never be imposed. That would mean that for the whole period of the twenty-five years the property might be looked upon as susceptible, at a certain time, to becoming affected by a privilege which would date back to the year 1925. No hypothec of that nature or of that character is known under the Quebec system of law.

For all the above reasons, I am of the opinion that the appeal should be allowed, the judgment of the Court of King's Bench (Appeal Side) reversed, and the hypothecary action of the respondents dismissed with costs throughout.

However, in view of the conclusions reached by some members of the Court, it follows that the appeal is allowed in part as to the amount.

HUDSON J.—This action is brought to enforce payment of taxes levied by the respondent corporation for the years 1938-40 against land acquired by the appellants in 1937.

The taxes in question are not ordinary school rates but special taxes levied to pay the annual interest and sinking-fund charges upon bonds issued by the respondents under the authority of a resolution passed in 1925. The relevant provisions of this resolution are as follows:

To provide for the annual interest and sinking fund of these debentures, a special tax, sufficient for the payment of interest and sinking fund, as hereinafter provided, shall be levied annually upon all taxable property on the collection roll of the school trustees of this municipality at present in force, and on the said school trustees proportion of all taxable property belonging to incorporated companies, and on any other taxable property that may come under the control of the said school trustees during the term of these debentures; and all lands subject to the said tax now entered on the said rolls, together with the buildings and improvements thereon made or erected or which may be made or erected thereon during the term of these debentures, shall be bound and liable for the said special tax, until the full and final payment and discharge of the said debt.

To provide for the payment of these debentures when due, a sinking fund shall be provided in which shall be deposited each year and shall remain deposited with accrued interest during the term of these debentures, an amount of $2\frac{1}{10}$ per cent. of the amount of debentures sold.

The lands on which the taxes have been levied were admittedly on the collection roll referred to in this resolution and as such became and remained liable for the special tax until they were acquired by the appellants. It is now claimed that such lands are exempt under section 251 (3) of *The Education Act* of Quebec which reads as follows:

The following properties shall be exempt from the payment of school assessment:

* * *

3. Property belonging to or gratuitously occupied by fabriques, or religious, charitable, or educational institutions or corporations legally constituted, for the purposes for which they have been established, and not held by them for purposes of revenue.

It will be observed that subsection 3 covers a large group of institutions and corporations who may be non-sectarian, catholic or protestant, as the case may be. It is admitted by the respondents that the appellants fall within the exempted class, but denied that the exemption thereby given extends to charges imposed on such lands prior to acquisition by the appellants.

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The language of the resolution is clear and definite. The lands are

> bound and liable for the special tax in each year until the final payment of the debt.

The charge operates from the time the bonds are sold until they are finally paid in full. The language of the resolution sets forth the expressed will of all concerned at the time it was passed and the time the bonds were issued. It was the will of the respondent corporation, of all of the property owners then affected, of the Lieutenant-Governor in Council of the province and the governmental officials who approved of the resolution. The purchasers of the bonds no doubt relied on what was stated and subsequent purchasers took with implied or express notice of its terms.

Any withdrawal of property from the taxable area so defined would throw on the remaining properties a greater burden than was assumed by the owners when they approved of the resolution. It would deprive the bondholders of security assured to them when they bought the bonds.

Under these circumstances the Court would not, in my opinion, be justified in refusing to give effect to the resolution unless compelled to do so by clear and definite statutory mandate.

The Education Act of Quebec imposes on school commissioners and school trustees a duty to acquire land and build necessary school buildings. If they have funds in hand there is no need for any authorization from the Lieutenant-Governor in Council. If, however, it is necessary to borrow, then it is provided by section 242:

> 242. Any school corporation may also, with the authorization of the Provincial Secretary and of the Minister of Municipal Affairs, Trade and Commerce and the recommendation of the Superintendent, borrow moneys and, for such purpose, issue bonds or debentures, but only in virtue and under the authority of a resolution indicating:
>
> 1. The objects for which the loan is to be contracted;
> 2. The total amount of the issue;
> 3. The term of the loan;
> 4. The maximum rate of interest that may be paid;
> 5. All other details relating to the issue and to the loan.
>
> The Minister of Municipal Affairs may require from the school corporation all other information he may deem proper.

It is not suggested in the present case that there was any failure to observe the provisions of this section, but the appellant relies strongly on the provisions of section 244 (1) which is as follows:

244. 1. No issue of bonds may be made, nor loan contracted, unless, by the resolution authorizing the same, there be imposed, upon the taxable property held for the payment of such bonds or such loan, an annual tax sufficient for the payment of the interest each year, and at least one per cent. of the amount of the loan, besides the interest, to create a sinking-fund for the extinction of the debt.

The plain object of this section was to prevent long-term borrowing without taxing provisions adequate to ensure payment of interest, and retirement of the debt at maturity.

The prohibition against the issue of bonds ceased to have any application here once the resolution had been approved and the bonds certified, as they were, under section 246. When sold they created a legal obligation.

Section 244 (1) does not in terms create the right to tax, nor does it forbid the imposition of a tax. It recognizes an existing right and imposes a duty to levy an annual tax. I do not find elsewhere any prohibition against binding land for the payment of future taxes in the case of the issue of bonds.

The argument is that the words in the section "there be imposed" mean an immediate imposition.

Now when a tax is "imposed" must in large measure depend upon the language, the context and circumstances of each case. *The City of Ottawa* v. *The Canadian National Railways* (1).

The imposition here intended cannot be the immediate fixing of a definite amount chargeable to each parcel of land in each year. This is apparent from subsection 3 of section 244 which reads as follows:

244. 3. It shall be the duty of the secretary-treasurer to make, every year until the payment of the loan or the redemption of the bonds, a special collection roll, apportioning, upon the taxable immoveable property liable for the payment of such loan or such bonds, the amount of the tax imposed on each one for the payment of the interest and the annual payment into the sinking fund.

The amount to be assessed in respect of each property must be apportioned each year. Over a period of thirty

(1) [1925] S.C.R. 494; 56 Ont. L.R. 153, at 158.

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years there almost certainly will be substantial changes in the relative value of individual properties, and possibly some in the total assessed value of a taxable district.

The only item that can be fixed at once and for all is the total amount to be paid each year for interest and sinking-fund. In the present instance that amount was fixed when the bonds were sold. Thereafter, it was a mere matter of calculation, the rate of interest and sinking-fund being fixed by the bond.

The total amount to be paid by all properties thus ascertained is the subject of the imposition, and that I think is what was intended to be done by the words of the resolution. To again repeat:

and all lands subject to the said tax now entered on the said rolls, together with the buildings and improvements thereon made or erected or which may be made or erected thereon during the term of these debentures, shall be bound and liable for the said special tax, until the full and final payment and discharge of the said debt.

The lands included in this general description are in the words of the section "held for the payment of the bonds". This surely implies an immediate and continuing imposition until the bonds are retired. What remained to be done before collection was elsewhere provided for in *The Education Act*. The old maxim "certum est quod certum reddi potest" has some application.

The provisions of the resolution were deemed to be adequate for the purposes of section 244. They were approved as such by the Lieutenant-Governor in Council on the advice of the Superintendent of Education, the Minister of Municipal Affairs and the Attorney-General of the province. The approval was given by order in council in the following language:

L'honorable Ministre des Affaires Municipales, dans un rapport en date du 27 octobre, (1925) expose: que le surintendant de l'instruction publique, par une lettre en date du 8 courant, recommande que les Syndics d'écoles protestantes de la municipalité scolaire de la ville d'Aylmer, comté de Hull, soient autorisés à contracter un emprunt de $25,000 pour 30 ans, à un taux d'intérêt n'excédant pas 5 pour cent, pour payer le coût de la reconstruction d'un "high school", récemment détruit par un incendie, et ce conformément à une résolution desdits syndics, adoptée à leur séance du 19 août 1925:

Que toutes les formalités prescrites par la loi ont été accomplies.

Vu le rapport du procureur général en date du 14 octobre 1925.

En conséquence, l'honorable Ministre recommande que ladite autorisation soit accordée, conformément aux dispositions de l'article 2728 de la loi scolaire.

This was done in pursuance of section 246 of *The Education Act* which is as follows:

246. Every bond or debenture, before delivery thereof, shall bear the seal of the Department of Municipal Affairs and a certificate of the Minister of Municipal Affairs or of any person specially authorized by the latter, establishing that the resolution authorizing the issue of such bond or debenture has been approved by the Lieutenant-Governor in Council, or the Minister of Municipal Affairs, Trade and Commerce, as the case may be, and that such bond or debenture is issued in conformity with such resolution.

Every bond or debenture issued in virtue of a resolution approved by the Lieutenant-Governor in Council or the Minister of Municipal Affairs, Trade and Commerce, as the case may be, and bearing such certificate shall be valid, and its validity shall not be contested for any reason whatsoever.

The resolution and order in council were then registered in the Registry Office at Hull and the debentures issued and sold.

The purchasers of bonds were entitled to accept the certificates as conclusive. No action was ever taken by a property owner to question the validity of the resolution or of the tax imposed thereunder, except in one single instance where it was questioned by the Honourable Louis Cousineau. He acquired some property within the area and contended that as a Roman Catholic his property was not subject to this special tax. The court there upheld the contention of the present respondents and sustained the action for reasons which were approved of by the Court of King's Bench in the present case. The *Cousineau* case is reported (1) and it is interesting to observe that it was decided early in the year 1937, the year appellants purchased the land in question.

The appellants' auteur, Wright, assumed as a charge against the land his proportionate share of the obligation created by the bond issue and the resolution was registered in the proper Registry Office in the year 1925, pursuant to section 5889 R.S.Q. 1909. So the appellants themselves have no right to complain of a lack of notice.

It is true that no action would lie to enforce payment until the levy had been made by the Secretary-Treasurer in each year under subsection 3 of section 244 and the proportionate amount payable in respect of each property definitely ascertained.

(1) *Syndics d'Ecoles de la Municipalité de la ville d'Aylmer* v. *Cousineau* (1937) Q.R. 75 S.C. 315

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But if we are to give effect to the plain meaning of the words of the resolution, my opinion is that the levy must be made in the words of subsection 3 "upon the taxable immoveable property liable for the payment", which in this case is the property named in the resolution and held for the payment of the debt under subsection 1. The levy here is merely the maturing of the tax obligation imposed by the original resolution.

With great respect to the other members of the Court who take a different view, I do not think that this conclusion is in conflict with the principle of the decision of this Court in the case of *Les Commissaires d'Ecoles de St. Adelphe* v. *Charest* (1). In that case, there was no definite imposition but rather a promise to do so in the future. Here there was an immediate burden imposed to be satisfied in a definite way. Moreover, there was not in that case an issue and sale of bonds approved of by the Lieutenant-Governor in Council.

It is difficult to reconcile several of the provisions of the statute and it seems to me it is a case where the court should keep in mind the general rules of good sense stated in Maxwell on Statutes, 8th Ed. p. 48:

> The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonize with the object of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.

There is a similar statement at p. 202.

In the court below the learned judges were unanimous in holding:

> Considérant que les lots de terre dont il s'agit en cette cause étaient partie de ceux détenus et possédés par des Protestants dissidents sous la juridiction des demandeurs-appelants, lors de la résolution de ces derniers en date du 19 août 1925 les imposant comme garantie du remboursement de l'emprunt de la somme de vingt-cinq mille dollars y mentionnés et les affectant au privilèges auquel la loi a pourvu pour ce remboursement;
>
> Considérant que cette résolution même, et non pas seulement les rôles de perception qui devaient en résulter, a fait naître et créé ce privilège auquel il est en loi pourvu que la garantie du remboursement de tout tel emprunt, de telle sorte que tous les immeubles alors détenus par des Protestants dans les limites de la juridiction des demandeurs-

(1) [1944] S.C.R. 391.

appelants ont été affectés au paiement et remboursement de la somme ainsi empruntée, comme aussi au privilège que la loi accorde au porteur de débentures se rapportant à cet emprunt;

Considérant que ce privilège ainsi créé et constitué par la résolution en question et sur les immeubles dont il s'agit ne devait désormais s'éteindre et disparaître que selon les données de l'article 2081 du Code civil;

With this holding I am in substantial agreement except as to the privilege of the bondholders for the reasons above stated.

I also agree with the court below in holding:

Considérant que l'acquisition subséquente par la défenderesse-intimée de certain des lots ainsi affectés, et particulièrement de ceux dont il s'agit en cette cause, a été et est sujette au privilège susmentionné qui les grevait déjà pour le solde resté dû de cet emprunt et quant à chacun des prélèvements annuels ou autres, auxquels ce remboursement devait encore donner lieu;

The rights and obligations contemplated by section 244 are *sui generis* and not in my opinion subject to the other provisions of the Act which may appear to be in conflict therewith. The section provides for the immediate creation of an obligation operating in a defined area to be satisfied in the future. The resolution gives all the rights and creates all the liabilities contemplated by the section and, in my opinion, the appellants took the land subject thereto and are not entitled to the preference which they claim over other properties in the area.

It appears from the record that after the appellants acquired the property they erected thereon a building valued at some $500,000 and the tax for the final year in question is based on that addition to value.

The appellants contend that even if the land was subject to the tax, the buildings were not. The Court of King's Bench did not accept this view and supported their opinion by a wealth of authority as well as by reference to article 2017 of the Code of Civil Procedure.

Recently, in the important case of *City of Vancouver* v. *Attorney-General of Canada et al.* (1) this Court insisted on the unity of the buildings and land where the Crown in the right of the Dominion claimed exemption from municipal taxes in a case where the buildings forming the basis of an increase in taxation were clearly the property of the Crown.

(1) [1944] S.C.R. 23.

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A departure from this general rule could be upheld only where clearly authorized by statute and I have not been able to find any such authorization.

On the evidence before the Court, it appears that the officers of the respondents must have taken into account in arriving at their figure for the final year in question something which was not authorized. At the trial it was formally admitted:

> Defendant admits, however, that plaintiffs took the necessary steps to impose said taxes, if plaintiffs were entitled to do so, and in particular that the resolution and other proceedings mentioned in paragraphs 2, 3, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the declaration were enacted and passed as alleged in said paragraphs.

There is no evidence before the Court sufficient to make any correction in the amount. However, I think it should be corrected by agreement, if possible; if not, by reference. Subject to this, I would dismiss the appeal with costs.

TASCHEREAU J.—En 1925, lorsque l'une de leurs écoles fut détruite par un incendie, à Aylmer, dans la province de Québec, les syndics d'école de cette municipalité décidèrent de la reconstruire, et à cette fin, empruntèrent $25,000.00.

Une résolution fut alors adoptée, dont les parties essentielles se lisent ainsi: —

> That, therefore, the said trustees do petition His Honour the Lieutenant-Governor of Quebec to grant authorization to the school trustees for the Municipality of the Town of Aylmer to borrow the said sum of $25,000 for the purpose above mentioned, said amount to be secured by an issue of debentures, payable thirty years from the first day of September 1925. Such debentures shall bear interest at the rate of 5% per annum, payable half yearly on the first day of March and September in each year. The said debentures shall be of the denomination of $500 each and to each debenture shall be attached coupons for the amount of each payment of interest to be payable each half year as provided. The said debentures and coupons to be made payable at the Royal Bank of Canada in Aylmer, Que.
>
> To provide for the annual interest and sinking-fund of these debentures a special tax, sufficient for the payment of interest and sinking-fund, as hereinafter provided, shall be levied annually upon all taxable property on the valuation roll of the school trustees of this Municipality at present in force, and on the said school trustees' proportion of all taxable property belonging to incorporated companies, and any other taxable property that may come under the control of the said school trustees during the term of these debentures; and all lands subject to the said tax now entered on the said rolls, together with the buildings and

improvements thereon made or erected or which may be made or erected thereon during the term of these debentures, shall be bound and liable for the said special tax, until the full and final payment and discharge of the said debt.

To provide for the payment of these debentures when due a sinking-fund shall be provided in which shall be deposited each year and shall remain deposited, with accrued interest, during the term of these debentures, an amount of $2\frac{1}{10}\%$ of the amount of debentures sold.

A cette époque, un nommé R. H. Wright, protestant dissident, était propriétaire de certains immeubles évalués en 1926 à $46,612.00, et la taxe spéciale qu'il lui fallait payer pour rencontrer les intérêts et le fonds d'amortissement, s'élevait à $69.92.

En 1937, l'appelante, la Congrégation du Très St-Rédempteur, une corporation religieuse catholique, se porta acquéreur des immeubles Wright pour la somme de $22,925.00, et en 1940, elle construisit un édifice dont la valeur, admise par les parties, s'élevait à au delà de $500,000.00. C'est ce qui explique que l'évaluation des propriétés occupées par l'appelante, qui n'était que de $29,658.00 en 1939 et 1940, fut portée à $512,258.00 en 1941.

Le litige qui est soumis à la Cour remonte à 1941, date où les intimés ont institué contre l'appelante une action hypothécaire au montant de $1,016.00, par laquelle ils réclament les cotisations pour les années 1939, 1940 et 1941. L'appelante a contesté cette action qui a été rejetée par la Cour Supérieure, mais unanimement maintenue par la Cour du Banc du Roi. C'est de ce dernier jugement que la Congrégation du Très St-Rédempteur appelle devant cette Cour, et la question que nous avons à décider est de savoir si les immeubles de l'appelante, corporation religieuse catholique, sont assujettis au paiement des taxes imposées par les intimés, pour défrayer le coût de la construction de cette école protestante.

Evidemment, la difficulté ne se présenterait pas, si l'appelante eut été propriétaire des immeubles à l'époque où la résolution a été adoptée. Par les termes mêmes de son acte d'incorporation, elle bénéficie de l'exemption accordée, par l'article 251 du code scolaire, à toutes les corporations religieuses et éducationnelles qui possèdent des immeubles, non pour en retirer un revenu, mais pour attein-

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dre les fins qu'elles se proposent. Dans cette hypothèse, toute tentative des intimés, pour faire déclarer que les immeubles de l'appelante sont grevés de charges privilégiées en garantie du remboursement de l'emprunt, eut été facilement repoussée.

Cette cause présente de sérieuses difficultés, et cette Cour a dû même ordonner une ré-audition afin d'obtenir des éclaircissements supplémentaires. Elle se résume maintenant, je crois, à quelques points essentiels, dont la solution me paraît suffisante pour déterminer les droits respectifs des parties.

Les corporations scolaires sont autorisées par la loi à effectuer des emprunts au moyen d'émissions de débentures, mais elles doivent nécessairement se conformer à certaines prescriptions impératives de la loi. Ainsi, l'article 244 du code scolaire est rédigé dans les termes suivants: —

> Art. 244. 1. Aucune émission d'obligations ne peut être faite et aucun emprunt ne peut être contracté, à moins qu'il ne soit imposé par la résolution qui les autorise, sur les biens imposables affectés au paiement de telles obligations ou de tel emprunt, une taxe annuelle suffisante pour payer l'intérêt de chaque année, et au moins un pour cent du montant de l'emprunt, à part l'intérêt, pour créer un fonds d'amortissement destiné à l'extinction de la datte.

Les mots "*à moins qu'il ne soit imposé par la résolution qui les autorise*" sont interprétés par les parties de façon différente. Les intimés soutiennent que dès l'origine, lors de la passation de la résolution en 1925, les immeubles ont été imposés et grevés d'un privilège qui doit subsister jusqu'à l'extinction totale de la dette, quelles que soient les mutations qui aient pu avoir lieu. L'appelant dit, au contraire, qu'il n'y a pas de charge hypothécaire ou privilégiée dès l'origine, mais que cette charge ne prend naissance au bénéfice des intimés annuellement, qu'aux dates où est confectionné le rôle de perception. On a aussi discuté afin de savoir qui, dans le cas qui nous occupe, est le débiteur personnel de la taxe. Est-ce Wright, le propriétaire originaire, ou les appelants qui dans la suite ont acquis sa propriété?

Il est nécessaire en premier lieu de bien déterminer ce qui constitue l'imposition d'une taxe scolaire, et quelles sont les formalités qu'il faut observer pour qu'elle soit en force et crée une dette que le contribuable aura l'obligation de payer.

Seule une résolution n'est pas suffisante. Il faut en outre que le secrétaire-trésorier fasse, chaque année, un rôle spécial de perception, répartissant sur les biens imposables, affectés au paiement des obligations, le montant de la taxe imposée sur chacun d'eux, pour l'intérêt et le paiement annuel du fonds d'amortissement. C'est le paragraphe 3 de l'article 244 du code scolaire qui impose cette obligation, et ce devoir doit être rempli tant que l'emprunt n'est pas totalement payé.

La résolution qui n'est pas suivie de la confection d'un rôle de perception ne fait pas même naître l'obligation de payer la taxe. Elle ne fait que " mettre la taxe en marche ", que créer une taxe " en puissance ", qui ne sera complétée que lorsque, les délais étant expirés, le rôle deviendra en vigueur. Avant que cette double opération ne se soit produite, la taxe n'est véritablement pas imposée; le contribuable ne connaît pas le montant qu'il doit; il n'est pas même le débiteur personnel de la Commission Scolaire. (*Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1)).

Il ne faudrait pas confondre l'imposition d'une taxe annuelle, avec la cotisation imposée en vertu de l'article 265 du code scolaire. Au contraire de la taxe annuelle, cette cotisation, dans les cas où la loi l'autorise, est imposée dès l'origine pour la totalité du montant, et est payable par annuités pour un espace de temps qui ne doit pas excéder cinq années.

C'est donc par l'effet combiné de la résolution et du rôle de perception que la taxe existe, et quand l'une ou l'autre de ces formalités essentielles ne se rencontre pas, alors le contribuable n'a pas l'obligation de payer et son immeuble ne peut être affecté d'aucun privilège.

En supposant même — et nous examinerons cet aspect de la question plus tard — que la résolution fût légalement adoptée, je suis bien d'opinion que le privilège n'a pas existé au bénéfice des intimés à cette date de 1925, lorsque la résolution a été adoptée par les syndics. Il me semble en effet inadmissible qu'une charge quelconque ait pu grever cet immeuble avant même que la dette ne soit créée, alors que cette taxe, comme nous l'avons vu précédemment,

(1) [1934] S.C.R. 445.

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n'était qu'en formation, et qu'aucune réclamation n'existait contre le débiteur personnel. Une taxe n'affecte une propriété immobilière que lorsque le rôle de perception est fait, et qu'il est homologué, selon le cas, par les commissaires ou les syndics d'écoles.

On a soutenu que dans la cause de *La Communauté des Sœurs des Saints Noms de Jésus et Marie* v. *The Corporation of the Village of Waterloo* (1), il a été décidé que dès l'origine, à la date où la résolution est passée, la propriété est grevée pour la totalité du montant. En effet, dans cette cause, il semble avoir été décidé que les taxes imposées en vertu d'un règlement municipal, pour pourvoir au paiement des intérêts et à la création d'un fonds d'amortissement pour le rachat de débentures, constituent une hypothèque affectant toute la propriété immobilière de la municipalité sujette à la taxe, *à la date où ce réglement est adopté* et l'hypothèque continuerait ainsi à affecter tout immeuble, même quand il passe à un acquéreur entre les mains de qui il aurait été exempt de taxation, si ce dernier en avait été propriétaire à la date où le règlement a été adopté. Et même, M. le juge Buchanan disait ceci: —

> When new valuation rolls were made, a new tax was not imposed, that was imposed under the by-law, and immediately affected all properties. The old tax still existed, and all that varied was the amount to be paid, more or less than before, according as the evaluation increased or diminished; but the tax itself was always there, etc. * * * etc. * * *

Mais, cette cause n'a jamais été suivie et la cour d'appel (*Les Ecclésiastiques du Séminaire de St-Sulpice de Montréal* v. *Masson*, (2)) a affirmé le principe que la charge hypothécaire ne prend naissance que lorsque le rôle de perception est en force, et à la page 582, la Cour dit ce qui suit: —

> Considérant qu'une taxe sur la propriété foncière ne devient une charge sur les immeubles qui y sont assujettis que par la mise en vigueur d'un rôle de cotisation qui en répartit le montant et détermine la part afférente à chaque immeuble qui y est assujetti, et ne devient pas une telle charge seulement par la mise en vigueur d'un règlement qui pourvoit à l'imposition de telle taxe.

Et pour ne citer que cette autre cause de la cour d'appel (*Surprenant* v. *Brault* (3)), M. le juge Tellier s'exprime de la façon suivante: —

(1) (1887) M.L.R. 4 Q.B. 20.
(2) (1900) Q.R. 10 K.B. 570.
(3) (1921) Q.R. 32 K.B. 481, at 485.

La taxe scolaire ne devient une charge portant hypothèque que si le contribuable fait défaut de la payer. Il ne peut être en défaut que du jour de l'échéance de la taxe. Cela me paraît indiscutable en présence du texte de la loi. Or, il ne suffit pas que le rôle de perception soit fait pour que la taxe soit exigible ou même due. La loi requiert bien d'autres formalités avant l'entrée en vigueur du rôle.

En résumé, le rôle de perception fait par le secrétaire-trésorier n'est rien qu'un projet et, partant, ne crée pas de dette, tant qu'il n'a pas été homologué par les commissaires d'écoles. Ce n'est que par l'homologation qu'il entre en vigueur et qu'il produit son effet. Jusque-là, il pourrait être comparé à un bill déposé devant le Parlement, mais non encore revêtu de la sanction définitive. A partir de l'homologation, la taxe est due; le contribuable doit l'acquitter dans un délai de vingt jours. S'il ne le fait pas, il est en défaut; et de ce moment-là, la taxe devient une charge spéciale portant hypothèque sur l'immeuble imposé.

Il est vrai que dans cette cause, il s'agissait de la taxe ordinaire imposée annuellement pour le maintien des écoles, en vertu des dispositions de l'article 249 du code scolaire, mais ce jugement démontre bien que la simple résolution ne fait pas naître de charge privilégiée dès la date de sa passation. D'ailleurs, la cause de *Waterloo* (1) que nous avons citée précédemment est aussi en contradiction avec un jugement de cette Cour (*La Banque Ville-Marie* v. *Morrison* (2)), où Sir Elzéar Taschereau s'exprimait de la façon suivante: —

L'appelante voudrait faire remonter la taxe en question jusqu'à la résolution du conseil de ville de 1867. C'est par cette résolution, dit-elle, que cette propriété a été taxée, pour le coût de l'élargissement de la rue St-Jacques.

Mais cette prétention n'a pas été accueillie par le jugement *a quo*, et ne pouvait l'être.

C'est là, de la part de l'appelante, soutenir que si son achat eût eu lieu, au lendemain même de cette résolution, et dès avant toute autre procédure, la garantie de l'intimée se serait étendue à cette taxe. Or cette proposition est erronée. Un immeuble n'est taxé en pareil cas, et la corporation n'y a aucun droit que pour la répartition qui établit le privilège, et non seulement son montant. Ou, en d'autres termes, il n'y a pas de privilège, il n'y a pas de taxes, tant que le rôle n'en a pas fixé le montant. La corporation n'a pas de créance contre qui que ce soit, avant la répartition.

C'est dans ce rôle et son homologation, qu'est le décret, qui, pour la première fois, affecte spécialement chacun des immeubles imposables. Et comment l'intimée aurait-elle pu payer une taxe dont le montant n'était pas établi, ou payer avant que la taxe fût due, payer sans cause, sans dette? Il est bien vrai que la résolution du conseil de ville a, dès 1867, décrété que les travaux requis pour l'élargissement de la rue St-Jacques

(1) (1887) M.L.R. 4 Q.B. 20. (2) (1895) 25 Can. S.C.R. 289, at 295.

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seraient aux frais des propriétaires intéressés, *ut universi.* Mais cette résolution par elle seule n'a pas créé de taxe spéciale sur chacun d'eux, *ut singuli,* ni sur chacune de leurs propriétés.

Les procureurs des intimés nous ont cité la cause de *Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1). Cette cause ne peut servir de précédent, car elle a été jugée sur des faits entièrement différents. La Canadian Allis-Chalmers Limited bénéficiait d'une exemption de taxe qui lui avait été accordée jusqu'au 1er septembre 1927. Un règlement de la cité de Lachine imposant une taxe, est entré en vigueur le 27 août 1927, et le rôle de perception fut complété et déposé au bureau du secrétaire-trésorier de la cité, et avis en fut donné le 10 septembre 1927. Le règlement de la cité de Lachine est donc entré en vigueur le 27 août, avant l'expiration de la période fixée pour l'exemption de la taxe, mais le rôle de perception n'a été publié que le 10 septembre, et la taxe n'est devenue exigible que le 30 septembre 1927.

Le règlement cependant, disait

> une taxe * * * est par le présent imposée * * * et sera prélevée sur tous les immeubles imposables de la cité de Lachine suivant leur valeur réelle telle que portée *au rôle d'évaluation en vigueur.*

Cette cour en est venue à la conclusion que le règlement imposant la taxe ne frappait pas les immeubles de la compagnie parce que l'exemption de la compagnie Canadian Allis-Chalmers Limited, dont ses immeubles bénéficiaient, était encore en force. Ces mêmes immeubles n'étaient pas imposables parce qu'à la date où le règlement a été passé ils n'apparaissaient pas au rôle. Ceux-là seuls qui étaient portés au rôle en vigueur à cette date pouvaient être imposés, d'après les termes mêmes du règlement. C'est la portée de la décision dans cette cause de *Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1), et comme on peut le voir, elle ne peut servir à déterminer le litige qui nous est actuellement soumis.

La véritable solution ne peut être, je crois, que la suivante: Quand la résolution qui, en vertu de l'article 244 du code scolaire, doit être passée pour autoriser l'emprunt, " et imposer une taxe annuelle suffisante pour payer l'intérêt de chaque année ", les immeubles des propriétaires sou-

(1) [1934] S.C.R. 445.

mis à la juridiction des syndics et apparaissant au rôle d'évaluation, sont dès lors choisis, déterminés d'avance, comme devant plus tard être affectés d'une taxe annuelle, à laquelle ils ne pourront pas être soustraits, même s'ils deviennent la propriété d'une autre personne; mais la taxe n'existe pas encore; et elle n'existera que quand sera fait et homologué le rôle de perception annuel. Admettre que l'immeuble est déjà grevé pour la totalité de l'hypothèque depuis la date où la résolution est passée serait contredire l'économie de notre loi, qui veut que la taxe n'existe que par l'effet combiné de la résolution et du rôle de perception; et, d'un autre côté, soutenir que l'immeuble n'est pas, dès la date où la résolution est passée, affecté en puissance d'une charge flottante qui se fixera définitivement lors de la passation du rôle de perception, serait enlever toute signification au mot " imposé ".

Voilà pour la nature de la taxe et pour le sens qu'il faut, je crois, donner au mot " imposé ".

Quant à la responsabilité personnelle, il ne fait pas de doute que, dès l'origine, elle est attachée au propriétaire de l'immeuble. Celui-ci a cette obligation personnelle, parce qu'il est soumis à la juridiction des syndics ou des commissaires, selon le cas. Et son immeuble est imposable parce qu'il est sa propriété, et c'est cet immeuble, par le montant qui apparaît au rôle d'évaluation, qui détermine l'étendue de cette responsabilité personnelle. Deux éléments doivent donc nécessairement se rencontrer: la juridiction des syndics sur la personne, et la nécessité pour cette personne soumise à cette juridiction d'être propriétaire d'un immeuble.

Il est donc vrai de dire, comme l'affirmait M. le juge Barclay dans la cause de *McKesson & Robbins Ltd.* v. *Biermans* (1) que Wright a été taxé " in respect of his property and in proportion to his right ". Le même langage a été employé dans la cause de *Brett* v. *Rogers* (2), et dans cette même cause de *McKesson & Robbins Ltd.* v. *Biermans,* qui a été portée devant cette Cour (3), M. le juge Rinfret, comme il était alors, accepte ce principe et dit que Biermans a été taxé " because he was the owner of land in the

(1) (1936) Q.R. 60 K.B. 289.
(2) [1897] L.R. 1 Q.B. 525.
(3) [1937] S.C.R. 113.

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parish on the date of the assessment". Il approuve également la citation que je viens de donner du jugement de M. le juge Barclay.

Il faut de toute nécessité qu'il y ait un débiteur personnel obligé de payer la taxe. On ne peut en effet concevoir l'existence de cette taxe affectant seulement un immeuble sans qu'il y ait une personne qui ait l'obligation légale de la payer et contre qui elle peut être légalement réclamée. Comme le disait Lord Thankerton dans la cause de *Provincial Treasurer of Alberta* v. *Kerr* (1):—

> Generally speaking taxation is imposed on persons, the nature and amount of the liability being determined either by individual units, as in the case of a poll tax, or *in respect of a taxpayer's interest in property*, or in respect of transactions or actings of the taxpayers. It is at least unusual to find a tax imposed on property and not on persons—in any event, the duties here in question are not of that nature.

Il ne fait pas de doute qu'à l'origine, le propriétaire de l'immeuble est le débiteur personnel de la taxe, mais cette responsabilité personnelle persiste-t-elle quand le contribuable originairement responsable vend le terrain "in respect of which" il a été taxé? Dans la cause de *McKesson & Robbins Ltd.* v. *Biermans* (2), M. le juge Rinfret se pose la question, mais ne la résout pas, et il s'exprime de la façon suivante, à la page 122: —

> It may be a question whether a roman catholic person, on whom the assessment has been imposed because he was owner of land in the parish on the date of the assessment, continues to be personally liable for the subsequent instalments of such assessment after he has sold the land in respect of which the assessment was made—a point which it is unnecessary to decide in this case—.

La question se pose donc maintenant, et je crois qu'elle doit être résolue dans la négative. Il me semble impossible, en effet, d'admettre que cette responsabilité personnelle du débiteur originaire, taxé "in respect of his property" puisse se continuer quand il cesse d'être propriétaire de l'immeuble. En vertu des dispositions de la loi, le rôle d'évaluation doit mentionner non seulement la valeur de l'immeuble, mais aussi la valeur des améliorations qui ont été faites subséquemment. Si la responsabilité personnelle ne disparaissait pas avec la vente de l'immeuble, elle se trouverait à augmenter, à cause des améliorations qui ajoutent à la valeur de cet immeuble. Dans le cas qui nous occupe,

(1) [1933] A.C. 710, at 713. (2) (1936) Q.R. 60 K.B. 289.

on comprendrait facilement la surprise et l'étonnement justifiés de Wright, propriétaire originaire, dont l'immeuble était évalué à $40,000.00 et qui maintenant, sans son consentement et peut-être aussi hors sa connaissance, verrait sa responsabilité personnelle augmentée, par suite de la nouvelle évaluation qui se chiffre à au delà de $500,000.00.

Comme il doit de toute nécessité y avoir un débiteur personnel, il faut nécessairement que cette responsabilité incombe à l'acquéreur de l'immeuble quelle que soit sa religion. Et, toujours dans cette même cause de *McKesson & Robbins Ltd.* v. *Biermans* (1), M. le juge Rinfret dit encore à la page 122: —

> while it is clear that once the assessment is imposed, the consequential charge on the land and the privilege which affects and binds the land under section 69 of the Act continues to affect it in the hands of a new owner, even if he be not a roman catholic and even if it be a joint stock company.

On invoque l'exemption accordée aux communautés religieuses par les articles 251 et 424 du code scolaire, mais les communautés religieuses ne bénéficient de ces exemptions que lorsqu'elles sont propriétaires des immeubles au moment de l'imposition originaire. Admettre la prétention contraire nous conduirait à un résultat désastreux, dont l'aboutissement serait la faillite des commissions scolaires et l'impossibilité pour elles de rencontrer leurs obligations financières. Si les commissaires ou les syndics d'écoles ne pouvaient plus percevoir les taxes qu'ils ont imposées, quand les immeubles, en premier lieu sujets à cette imposition, deviennent l'objet de mutations qui font qu'ils deviennent la propriété de personnes professant une religion différente, alors, la seule source de revenus possible pourrait bien disparaître en partie ou même en totalité, et où serait la garantie des obligataires?

Pour résumer, je suis d'opinion que Wright était personnellement responsable de la taxe qui annuellement a été imposée, parce qu'il était propriétaire d'un immeuble, mais cette responsabilité personnelle a disparu lors de la vente de l'immeuble en question, pour devenir celle des appelants dans la présente cause, qui ont acquis l'immeuble " in respect of which " la taxe a été imposée.

(1) (1936) Q.R. 60 K.B. 289.

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En posant ces quelques principes qui, je crois, sont ceux qui doivent nous guider pour déterminer la présente cause, j'ai assumé que la résolution de 1925 avait été légalement adoptée, que l'immeuble avait été affecté, pour employer l'expression dont je me suis servi précédemment, d'une charge flottante qui devait définitivement se fixer annuellement lors de l'adoption du rôle de perception. Mais, en est-il ainsi, et l'immeuble a-t-il été véritablement, par les termes de la résolution passée, affecté dès l'origine? Je suis bien d'opinion que le privilège n'a pas existé au bénéfice des intimés à cette date de 1925, lorsque la résolution a été adoptée par les syndics. L'article 244 du code scolaire est rédigé en des termes non équivoques, et stipule qu'aucune émission d'obligations ne peut être faite, et aucun emprunt ne peut être contracté, *à moins qu'il ne soit imposé par la résolution qui les autorise,* sur les biens imposables affectés au paiement de telles obligations ou de tel emprunt, une taxe annuelle suffisante pour payer l'intérêt de chaque année, et au moins un pour cent du montant de l'emprunt, à part l'intérêt, pour créer un fonds d'amortissement destiné à l'extinction de la dette.

Ainsi donc, aucune émission d'obligations ne peut être faite à moins qu'une " taxe ne soit imposée " et cette imposition doit avoir lieu avant que l'emprunt ne soit effectué. La disposition de la loi est claire. Elle pose une condition essentielle, préalable, à laquelle est subordonnée la vente des obligations. La législature a voulu avec raison que les commissions scolaires pourvoient d'avance au remboursement des intérêts et des fonds d'amortissement, et comme le disait cette cour dans la cause des *Commissaires d'Ecoles de St-Adelphe* v. *Charest et al.* (1): —

> On conçoit facilement la sagesse d'une semblable législation dont le but évident est de mettre un frein aux dépenses exagérées, et de protéger le contribuable contre les extravagances des administrateurs.

Or la résolution, sur laquelle les intimés se basent pour prétendre qu'un privilège a existé dès l'origine sur les immeubles de Wright, n'impose clairement pas de taxe, et les termes mêmes employés doivent inévitablement nous conduire à cette conclusion. La résolution en effet ne dit pas qu'une " taxe est imposée et sera prélevée ", mais elle dit

(1) [1944] S.C.R. 391.

seulement "shall be levied". On n'a fait que manifester une intention de prélever une taxe dans l'avenir, sans même qu'elle ne soit imposée. Dans la cause des *Commissaires d'Ecoles de St-Adelphe* v. *Charest* (1), où un futur était également employé dans la rédaction d'une résolution, cette Cour a également décidé: —

C'est une erreur de prétendre qu'en employant les expressions "sera imposée et prélevée", on a pourvu à ses voies et moyens, et qu'on s'est assuré une source de revenus pour payer le coût de l'entreprise.

En rendant cet arrêt, cette Cour n'a pas créé de jurisprudence nouvelle, mais n'a fait que confirmer plusieurs décisions rendues précédemment.

Ainsi, la Cour du Banc du Roi dans cette même cause des *Commissaires d'Ecoles de St-Adelphe* v. *Charest* (2) disait ce qui suit: —

Quand la résolution porte: "Il sera imposé et prélevé par la Commission scolaire une taxe spéciale annuelle suffisante sur toutes les proprietés taxables", cette résolution viole l'article 244 du code scolaire disposant: "Aucune émission d'obligations ne peut être faite et aucun emprunt ne peut être contracté à moins qu'il ne soit imposé par la résolution qui les autorise * * * une taxe annuelle * * * *". La résolution susdite n'impose pas la taxe;

Et dans la cause de *Goulet* v. *La Corporation de la Paroisse de St-Gervais* (3), Sir Mathias Tellier alors juge en chef s'exprimait ainsi: —

Ledit règlement statue, pour chaque pont, qu'une taxe spéciale sera imposée et prélevée sur les biens imposables des contribuables obligés audit pont, afin d'en faire le paiement, dans un seul versement, argent comptant. Le demandeur objecte que, par cette disposition, la taxe ne se trouve pas actuellement imposée; et il conclut, en se basant sur l'article 627a du Code municipal, que le règlement est nul.

Le demandeur a raison, lorsqu'il dit que, par la disposition ci-dessus du règlement, la taxe ne se trouve pas actuellement imposée; mais je crois qu'il a tort de prétendre que cela rend le règlement nul. L'article 627a, sur lequel il se base, ne va pas si loin que cela. Il frappe de nullité tout contrat d'entreprise donné par une corporation municipale qui n'a pas pourvu à ses voies et moyens; mais il ne déclare pas invalide le règlement lui-même en exécution duquel elle a agi.

On a dit que la jurisprudence que je viens de citer, et en particulier la cause de *Charest* (1), ne s'applique pas, parce que dans la présente cause, s'il est vrai que le futur est employé pour le prélèvement de la taxe, il faut présumer l'existence d'une imposition dès 1925, dont le prélèvement

(1) [1944] S.C.R. 391. (2) Q.R. [1943] K.B. 504.
(3) (1930) Q.R. 50 K.B. 513.

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n'est que la conséquence. On signale que, dans les causes qui ont servi à fixer la jurisprudence, le futur était clairement employé, quant à l'imposition.

Je ne puis admettre cette prétention. Il s'agit de taxe, et la loi doit être interprétée restrictivement, et au bénéfice du contribuable. A moins que l'immeuble ne soit imposé d'une façon raisonnablement claire, il ne doit pas être sujet à la taxe. Ici, non seulement il n'y a pas d'ambiguité, mais il n'y a aucune imposition quelconque.

Il s'ensuit donc, des termes mêmes de la résolution de 1925 tels qu'interprétés à la lumière de la jurisprudence que je viens de citer, que l'immeuble de Wright n'a pas été imposé à l'origine et qu'aucune charge ne l'a affecté. Cet immeuble n'a pas été à ce moment déterminé d'avance comme devant plus tard être affecté d'une taxe annuelle par l'effet de la confection d'un rôle de perception.

Cependant, ce défaut d'imposition ne rend pas nulle la résolution qui peut toujours être complétée plus tard, mais il rend illégaux tout contrat donné ou tout emprunt effectué comme conséquence de son adoption (*Goulet* v. *La Corporation de la Paroisse de St-Gervais* (1) et *Les Commissaires d'Ecoles de St-Adelphe* v. *Charest et al.* (2)). Cette absence d'imposition actuelle lors de la passation de la résolution de 1925 serait donc une omission suffisante pour frapper l'emprunt d'illégalité, car elle constitue clairement une violation des dispositions de l'article 244 du code scolaire. Heureusement, pour prévenir les inconvénients auxquels des rédactions illégales de résolutions municipales ou scolaires pourraient donner lieu, la législature a, par l'article 246 du code scolaire, décrété que la validité d'une obligation émise ne peut être contestée pour aucune raison, lorsque la résolution qui autorise son émission a été approuvée par le Lieutenant-Gouverneur en conseil ou le Ministre des Affaires Municipales, de l'Industrie et du Commerce, et que cette même obligation porte le sceau et le certificat qu'elle est émise conformément à la résolution qui l'a autorisée.

En admettant que les présentes débentures émises par les intimés portent ce certificat de validité, elles doivent donc être considérées comme émises légalement. Mais,

(1) (1930) Q.R. 50 K.B. 513. (2) [1944] S.C.R. 391.

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cette disposition législative ne crée des relations légales qu'entre le porteur de la débenture et la corporation débitrice de la dette, et confère au porteur un titre incontestable qui lui permet de réclamer des intimés.

Il n'existe cependant aucun lieu de droit entre le porteur de la débenture et le contribuable, et l'obligation de ce dernier n'est affectée en aucune façon par l'apposition de ce certificat sur la débenture.

Dans le cas où la corporation scolaire ferait défaut de payer les intérêts ou le capital à échéance, le recours de l'obligataire serait contre la corporation scolaire et nullement contre le contribuable. L'obligation que peut avoir ce dernier de payer n'existe que vis-à-vis la corporation scolaire, et le droit qu'a le porteur de la débenture, de percevoir ce qui lui est dû, ne peut donc s'exercer que contre cette dernière.

La loi, qui valide la débenture et qui la rend incontestable, n'augmente pas et ne diminue pas la responsabilité du contribuable. Elle n'affecte pas de privilège l'immeuble dont il est propriétaire; elle ne fait que rendre parfait le titre du prêteur, qui ne peut être contesté à cause du certificat dont il est revêtu.

Avant d'emprunter par débentures ou autrement, toute corporation scolaire doit se conformer aux dispositions de l'article 242 du code scolaire. Elle doit obtenir l'autorisation des autorités provinciales, et produire la résolution qui mentionne l'objet, le montant, le terme et le taux de l'emprunt. Evidemment, la seule permission ainsi donnée ne légalise pas l'emprunt. Elle accorde l'autorisation nécessaire, et c'est l'accomplissement d'une condition que la loi impose pour que l'emprunt devienne possible.

Lorsque les conditions de l'emprunt sont ainsi approuvées, alors, nous dit l'article 246, la débenture est validée et ne peut être contestée, quand elle porte le sceau du département des Affaires Municipales. Mais ce sceau, s'il rend incontestable le titre du porteur, ne confère pas à la corporation scolaire vis-à-vis des contribuables plus de droits que ceux que lui donne le code scolaire, ou qui résultent des termes mêmes de la résolution.

C'est l'opinion exprimée déjà par M. le juge Tellier, dans la cause de *Goyer* v. *Corporation de la ville de St-*

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Lambert (1). Dans cette cause, où l'approbation d'un règlement, en vertu de la loi 4 Geo. V, chap. 50, rendait valide toute obligation émise subséquemment, il a été décidé que

la loi 4 Geo. V, Chap. 50 ne peut être invoquée en faveur d'un règlement nul ou invalide, si elle peut servir de protection au porteur ou acquéreur de bonne foi d'une obligation municipale.

Il en est ainsi, je crois, de la cause qui nous est soumise, et le certificat de validité attaché à la débenture n'a pas pour effet de changer les termes de la résolution et d'étendre son application à des contribuables qui sont autrement hors de son atteinte.

Les intimés semblent avoir réalisé que par leur résolution de 1925 aucune taxe n'a été imposée, car chaque année subséquente ils ont imposé cette taxe par des résolutions successives. Ainsi, en 1938, on adopte la résolution suivante: —

A special tax rate of 1¾ mills be levied on all properties on which we are entitled to collect for the year 1938-39.

En 1939, on agit de la même façon: —

A special tax rate of 1¾ mills be imposed on our whole school district for the year 1939-40.

En enfin, en 1940, les intimés passent une dernière résolution qui se lit ainsi: —

A special tax rate of 1¾ mills be imposed on our whole district for the same year.

Sauf en 1938, où on emploie de nouveau le mot " levied ", on impose clairement la taxe, contrairement à ce qui fut fait en 1925, où l'on se contentait d'exprimer seulement l'intention d'en prélever une plus tard.

Dans la présente cause, il me semble clair, pour les raisons que je viens d'exposer, que la résolution de 1925 n'a pas même mis en mouvement la procédure nécessaire, dont l'aboutissement devait être l'imposition d'une taxe. Elle ne dit pas qu'une taxe est imposée, et elle ne peut donc pas être jointe aux rôles annuels de perception qui ont été faits chaque année, pour engendrer une obligation de la part des contribuables.

C'est aux résolutions passées en 1938, 1939 et 1940, qu'il faut se rapporter pour établir la source la plus reculée de la taxe annuellement imposée, et c'est à ces résolutions qu'il

(1) (1920) Q.R. 59 S.C. 232.

faut joindre les rôles de perception faits durant les mêmes années, pour trouver l'autorité que peuvent avoir les intimés de percevoir quoi que ce soit de la corporation appelante.

La résolution qui impose, et le rôle de perception qui complète, sont tous deux soit de 1938, de 1939 ou de 1940, au moment où, par les dispositions mêmes de la loi, les immeubles de l'appelante ne peuvent pas être imposés.

Pour ces raisons, je suis d'opinion que le présent appel doit être maintenu avec dépens de toutes les cours, et que les conclusions du jugement rendu par la Cour Supérieure doivent être rétablies.

Je m'accorde avec le Juge en Chef quant à la rédaction du jugement formel.

RAND J.—This appeal concerns a question of the taxability, for annual assessments of interest and sinking-fund increments, on bonds issued by a Protestant minority school corporation, of land which, at the time of the passing of the resolution providing for the issue, owned by a Protestant, was subsequently sold to a Roman Catholic institution, by the school law exempt from taxes as to all property occupied by it for religious purposes. In the hands of the vendor, the land was assessed for approximately $25,000. After the purchase, the institution constructed buildings at a cost of over half a million dollars. The Court of King's Bench for Quebec, reversing the Superior Court, has maintained the taxation on the basis of the full value of the land and the improvements; and the institution appeals to this court. The question, though of narrow compass, presents considerable difficulty in the interpretation of certain provisions of *The Education Act* of the province.

The scheme of the Act sets up throughout the province school municipalities. The initial government of a municipality is by school commissioners, who are constituted a corporation. Provision is made for the withdrawal of persons of a minority faith, called dissentients, who may organize their own school administration under the direction

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of school trustees. The power to tax for the municipality is distributed between these two bodies, and although the language of section 310 is that the

> trustees of dissentient schools shall alone have the right to impose and collect the taxes to be levied upon the dissentient inhabitants,

I take it to limit also the jurisdiction of trustees.

Section 244 prescribes the conditions under which bonds may be issued or loans contracted, and its language is important:

> 244. (1) No issue of bonds may be made, nor loan contracted, unless, by the resolution authorizing the same, *there be imposed, upon the taxable property held for the payment of such bonds or such loan, an annual tax* sufficient for the payment of the interest each year, and at least one per cent. of the amount of the loan, besides the interest, to create a sinking-fund for the extinction of the debt.
>
> * * *
>
> (3) It shall be the duty of the secretary-treasurer to make, every year until the payment of the loan or the redemption of the bonds, a special collection roll, *apportioning, upon the taxable immovable property liable for the payment of such loan or such bonds, the amount of the tax imposed on each one* for the payment of the interest and the annual payment into the sinking-fund.

Then there are general provisions for taxation:

> 249. The school commissioners and trustees shall cause to be levied by taxation the taxes necessary for the support of the schools under their control.
>
> The rates of school assessments shall be uniform *upon all taxable property in the school municipality.* The assessment shall be based upon the valuation of such taxable property, and shall be payable by the owner. If not paid, such assessment shall be a special hypothecary charge upon such property, not requiring registration. R.S. (1909), 2730, 2731.
>
> * * *
>
> 388. School assessments and monthly fees *shall be imposed* by all school corporations, between the first day of July and the first day of September in each year.
>
> The *imposition of such taxes* shall not, however, be considered null if made after the delay fixed. R.S. (909), 2857.
>
> 389. After the *imposition of the taxes,* the secretary-treasurer shall, without delay, *make a collection roll.*
>
> He shall also make a special collection roll whenever a special assessment *has been imposed* after the making of the general collection roll, or whenever ordered so to do by the school board. R.S. (1909), 2858.

The word "imposed" appears to be used consistently to designate a formal act of the commissioners or trustees by which their taxing power is exercised and, under sub-

section (1) of section 244, an annual tax for future years, subject to sub-section (3), created. The language of sub-section (1), "Unless * * * there is imposed * * * an annual tax," taken with that of sub-section (3), lands itself to two possible conceptions: one, that the tax is a commitment in gross for an ascertained total sum in relation to the entire body of taxable property within the jurisdiction of the trustees as one whole; the other, that it is specific as to amount in relation to each immovable. In the former, the school board binds itself to levy a certain sum by taxes in each of a number of years. This leaves uncertain the property and its valuation. These may be fixed as of the date of the resolution or as each year arrives; or the property may be that taxable at the date of the resolution and the valuation as of the year of levy, or vice versa. But this view attributes a signification to the word "tax" which the ordinary meaning does not support. I do not see how the quoted language can be satisfied in the sense of "tax" except by the second of the alternatives but with the qualification that the tax is potential only until the year is reached for which it is intended. I do not think we can speak accurately of a tax "in gross," nor that a tax can be *imposed* which is not specific and referrable to its precise subject-matter.

The word "apportioning" in sub-section (3) does, in one sense, appear appropriate to an amount—though not a tax—"in gross" to be spread each year over the various parcels, on the basis of the valuations for that year. But the difficulty of that construction—apart from the language of sub-section (1)—arises from the words, "the amount of the tax imposed on each one." The "apportioning" is upon the taxable immovable property "liable for the payment of such loan or such bonds" which I take to be the property mentioned in sub-section (1) as "held for the payment of such bonds"; but what is apportioned is the "*amount of the tax imposed on each one*", meaning each separate immovable. The "imposition" is made only under sub-section (1), and sub-section (3), therefore, assumes the effect of sub-section (1) to be to raise a specific potential tax on each parcel. If that is the case, then the second conception accords with both sub-sections.

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After the best consideration I can give to it, I take the language of the section to mean that an "annual tax"—annual in relation to the years of the term, for instance, of a bond issue—carrying implicitly the characteristic of a specific amount in relation to each separate parcel of land, is declared; and that it is en marche to become definitive as a realizable exaction as each year is reached, and as it is extended on a collection roll. It is as if the resolution in 1925 were in the words: we now impose a tax of $30 on property "A" for the year 1940, and as if it were repeated in 1940. An annual resolution is passed in advance: it prescribes a taxing effect to be attained in future.

But the declaration of a potential tax in a certain amount in respect of each taxable immovable for each year during the currency of the obligation, as a specific imposition, can be made only by reference to the valuation or assessment roll, at the time of the resolution, in force. When the tax becomes levied in each year as the collection roll is completed, the time of payment is determined, but whether there is determined also personal liability for each year's tax, we do not need to enquire. The resolution, then, fixes as of its date the amount of the annual levy, the lands to be taxed, and the property valuations: *Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1).

Section 391 provides for the homologation of the collection roll, and after the period for payment has expired the taxes become a special hypothecary charge upon the property taxed. Even if that section does not apply to such a special assessment, the taxes, upon default of payment, would become a privilege upon the immovables under articles 2009 and 2011 of the Civil Code.

This interpretation is supported by the provisions of section 17 of chapter 111, R.S.Q. 1925. They require the registration of a certified copy

de tout règlement passé dans le but de faire un emprunt au moyen d'une émission d'obligations

by a corporate body. This copy is to be accompanied by a statement of the amount and other details of the loan, the assessed value of the property of the municipality and the yearly rate of assessment to pay for the bonds. Here is

(1) [1934] S.C.R. 445.

public notice to every prospective purchaser of lands of the long term obligations by which a particular parcel may be bound. A copy of the resolution in this case, with the particulars required, was registered in December, 1925.

Somewhat the same view of similar legislative language was taken by the courts of Quebec as early as 1887 in *La Communauté des Sœurs des Saints Noms de Jésus et Marie* v. *The Corporation of the Village of Waterloo* (1). There, the *Municipal Act* gave to the council the power to "impose" a tax on all the assessable property of the municipality for the payment of the interest and sinking-fund of a bond issue, and likewise provision that the tax "sera levée, prélevée et perçue annuellement" in the same manner as other taxes "sur toutes les propriétés imposables de la municipalité." There was involved, as here, a transfer of an immovable to a religious order of the Roman Catholic faith and precisely the same grounds of objection were presented to the Court of King's Bench as were submitted to this court. The language of the judgment seems to carry the hypothecary charge from the date of the original resolution. But for the matter before us, it is not necessary to go beyond the construction that a hypothec or privilege arises upon default in payment of each year's taxes; there is no relation back in time.

A number of cases have arisen in Quebec in which the incidence of these impositions upon contracts for the sale of immovables has been in question and the principle laid down has held the purchaser bound to the assumption of the tax where the levy has been made subsequently to the date of the contract. But that obviously follows from the view that the tax becomes complete only upon the homologation of the collection roll. *A fortiori* at that time there is no encumbrance in the nature of a hypothec or privilege.

But it is said that the resolution in this case is invalid under the judgment of this court in *Les Commissaires d'Ecoles de la Paroisse de St. Adelphe* v. *Charest* (2). It was there held that, under sections 237 and 244 of the Act, the resolution must presently impose the taxes and that the language, "sera imposé," is not sufficient. In the

(1) (1887) M.L.R. 4 Q.B. 20 (2) [1944] S.C.R. 391.

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resolution here, there is no express imposition and the future tense is used in the expression, "shall be levied." But I read the paragraph providing for the taxation to imply in fact a present imposition sufficient for the purposes of section 244. I am not disposed to extend the rule of the *Charest* case (1) beyond the precise words that were there dealt with. We must not overlook the fact that the statute deals with administration by ordinary citizens who are not to be charged with special appreciation of the refinements of language where the substance of the statutory requirement is clearly indicated by the language they use.

But there is another ground upon which I would hold the resolution now to be unassailable. By section 246, it is provided that every bond before delivery shall bear a certificate of the Minister of Municipal Affairs establishing that the resolution authorizing the issue of such bond has been approved by the Lieutenant-Governor in Council and that such bond is issued in conformity with such resolution; and that every bond bearing such certificate shall be valid "and its validity shall not be contested for any reason whatsoever". Now, admittedly the bond bore the certificate and is, therefore, valid, but to what does that validity extend? It is argued that there is created only a valid debt but I cannot agree with that. We must attribute to the legislature some knowledge of the commercial practices in marketing bonds of this nature, and the whole object of section 246 is to conclude just such questions as have been debated in this case. I should say that a purchaser of such a bond is entitled to the security he would have had if every preliminary or conditional step had been taken in exact accordance with the provisions of the statute. Section 244 declares that the bond shall not be issued unless the resolution imposes the tax. The bond in the hands of a purchaser becomes valid and it would be intolerable that the purchaser should be told that the condition essential to that validity did not in fact or in law exist. The special assessment is for the sole benefit of the bondholders. They are the beneficiaries of that power to tax and the sufficiency of the resolution must be deemed concluded not only in

(1) [1944] S.C.R. 391.

relation to the bond as a debt, but also to the taxation intended to be appropriated exclusively to the payment of that debt.

That the valuation and collection rolls are significant to creditors and purchasers of bonds is indicated by the Chief Justice in *Canadian Allis-Chalmers Limited* v. *The City of Lachine* (1):

> En outre, aux créanciers de la municipalité elle indiquerait de façon erronée la valeur de leur gage; et, surtout, elle représenterait faussement aux prêteurs le montant réel de leur garantie.

Like considerations underlie the interests of the taxpayers *inter se*. The obligation they undertake is related to the property out of the taxes on which it is to be discharged: and any material subtraction would work an injustice upon the remaining property. The principle recognized in the Act in relation to alterations in boundaries of school municipalities and districts, sections 77, 78, 85, 275 et seq., regards the interests of the taxpayers as well as of the bondholders.

The respondents are, then, entitled, as the Court of King's Bench has held, to succeed in this action but the taxes they are claiming must be reduced to amounts based on the valuation roll in force when the resolution was passed, and the judgment modified accordingly.

To that extent the appeal must be allowed. If the parties cannot agree upon the amount recoverable on that basis, the matter may be brought before the registrar for determination. The appellants should have two thirds of their costs in this court: the respondents their costs of the trial and of the appeal to the Court of King's Bench on the scale applicable to the sum to which they may be found to be entitled.

ESTEY J.—The respondents (plaintiffs) in this action claim of the appellant (defendant) the amount levied against the property in question as a special tax in the years 1939, 1940 and 1941.

In May, 1925, the Aylmer High School was destroyed by fire. In order to rebuild, the trustees obtained through a

(1) [1934] S.C.R. 445, at 455.

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sale of debentures the sum of $25,000. The procedure that must be followed by the trustees with respect thereto is set forth in the *Education Act* (1925) R.S.Q. ch. 133.

The particulars of the resolution passed by the trustees under the provisions of section 244 and of the bonds issued pursuant thereto were registered in the Registration Office at Hull, Que., in December, 1925.

The property in question was at the time of the passing of the resolution owned by Mr. R. H. Wright and subject to the tax. This tax was collected annually with respect to this property until the year 1937, when it was purchased by the appellant.

The appellant contends that the resolution passed by the trustees does not meet the requirements of section 244.

This resolution passed by the trustees on August 19, 1925 in part reads as follows:

> To provide for the annual interest and sinking fund of these debentures, *a special tax,* sufficient for the payment of interest and sinking fund, as hereinafter provided, shall be levied annually upon all taxable property on the collection roll of the school trustees of this municipality at present in force, and on the said school trustees' proportion of all taxable property belonging to incorporated companies, and on any other taxable property that may come under the control of the said school trustees during the term of these debentures; and all lands subject to the said tax now entered on the said rolls, together with the buildings and improvements thereon made or erected which may be made or erected thereon during the term of these debentures, shall be bound and liable for the said special tax, until the full and final payment and discharge of the said debt.

It is contended that its language "a special tax shall be levied annually," phrased in the future tense, is not, and cannot provide, for a present or immediate tax within the meaning of section 244 of the *Education Act.* In my opinion that contention would have been available to the appellant if it had been made before the government approved of the resolution, as provided in section 246 of the *Education Act.* The existence of this approval in my opinion distinguishes this case from *The School Commissioners of St. Adelphe* v. *Charest et al.* (1)

Sections 242-246 inclusive deal specifically with the steps that must be taken by school trustees in order that the approval of such a resolution may be granted by the

(1) [1944] S.C.R. 391.

Lieutenant-Governor-in-Council. These steps were taken and on November 8th, 1925, this resolution was approved by the Lieutenant-Governor-in-Council.

It is specifically provided by section 244 (1):

> No issue of bonds may be made, nor loan contracted, unless, by the resolution authorizing the same, there be imposed, upon the taxable property held for the payment of such bonds or such loan, an annual tax sufficient for the payment of the interest each year, and at least one per cent. of the amount of the loan, besides the interest, to create a sinking-fund for the extinction of the debt.

The bonds or debentures were issued by virtue of the resolution passed by the school corporation, and approved by the Lieutenant-Governor-in-Council, as provided under section 246, as it then was:

> 246. Every bond or debenture, before delivery thereof, shall bear * * * a certificate of the Minister of Municipal Affairs or of any person specially authorized by the latter, establishing that the resolution authorizing the issue of such bond or debenture has been approved by the Lieutenant-Governor-in-Council * * * and that such bond or debenture is issued in conformity with such resolution.
>
> Every bond or debenture issued in virtue of a resolution approved by the Lieutenant-Governor-in-Council * * * and bearing * * * such certificate shall be vaid, and its validity shall not be contested for any reason whatsoever.

This language used by the legislature is very clear and definite. The certificate establishes the approval of the resolution, that the bonds or debentures are issued in conformity with such resolution, and that they shall be valid, and their validity shall not be contested for any reason whatsoever.

Then this section 246 must be read and construed with the other relevant sections, and particularly section 244.

The language of section 244 (1) is equally clear and definite and confirms what appears to me to be the meaning of section 246, that the approval therein provided for applies to the resolution and includes both the validity of the bonds and the existence of the security. The main purpose of the resolution is to authorize the loan and impose a tax upon "the taxable property held for the payment". It provides for an assured source of payment, an item of the greatest importance to the purchasing public. It follows that this is one of the essentials to be considered by the Lieutenant-Governor-in-Council when arriving at a decision to grant or refuse the approval of the resolution.

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When the approval of the Lieutenant-Governor-in-Council is granted as evidence by the certificate, it constitutes an assurance to the ratepayers in the district, the school trustees, and all concerned that the resolution, if within the competence of the trustees to pass, is valid, and that the bonds are issued in conformity with the resolution, and supported by the security indicated in the resolution.

This provision is similar to that which has been adopted by other provinces throughout the Dominion. The purpose and object of the legislation is to place bonds and debentures upon a stable basis and to facilitate the sale of the bonds and debentures by the school districts. It removes from the courts any inquiry into questions properly subject to the approval. That is as far as it goes. Such a provision does not enlarge the jurisdiction of the trustees and questions with respect to jurisdiction may be raised before the courts. *Re Harper and Township of East Flamborough* (1); *In re Gillespie et al. and the City of Toronto* (2); *Kuchma* v. *Rural Municipality of Tache* (3); *The Canadian Agency Ltd.* v. *Tanner* (4); *Molison* v. *Woodlands* (5).

The appellant further submitted that the by-law was illegal because it included a provision that after acquired properties should become subject to the tax. No effort was made to support the validity of this latter provision. The authorities established as stated by Mr. Justice Anglin (later Chief Justice) that:

> a by-law of a public representative body clothed with ample authority should be "benevolently" interpreted and supported if possible.

The City of Montreal v. *Morgan* (6).

If part of a by-law is void, it does not follow that all of the by-law is void if the void part can be severed from that which is valid. Halsbury, 2nd ed., vol. 8, p. 48, par. 82. Meredith & Wilkinson, Canadian Municipal Manual, p. 255; Robson & Hogg, Municipal Manual, p. 14. In my opinion the part here objected to in this by-law is severable, and its invalidity does not justify a declaration that the by-law as a whole is invalid.

(1) (1914) 32 Ont. L.R. 490.
(2) (1892) 19 Ont. App. R. 713.
(3) [1945] S.C.R. 234.
(4) (1913) 6 Sask. L.R. 152.
(5) (1915) 25 Man. R. 634.
(6) (1920) 60 Can. S.C.R. 393, at 409.

It was also contended that the resolutions of December 6th, 1938, November 13th, 1939 and November 26th, 1940 were unnecessary in relation to tax imposed by the resolution of August 19th, 1925 and that in fact these resolutions as passed imposed the taxes claimed for in this action. In view of the provisions of 244 (3), I agree that these resolutions were unnecessary in relation to the resolution of 1925. It should be noted that they do not purport to, nor in my opinion do they alter, change or affect the resolution of 1925, and that so far as this action is concerned, they must be treated as mere surplus.

In my opinion, the resolution was within the competence of the trustees to pass, and when approved, the land in question in the language of the statute was " taxable property held for the payment of * * * such loan ".

The respondent asks a declaration that the property in question " be declared affected and hypothecated " in its favour for the payment of the taxes for the three years here claimed. Under the provisions of the *School Act,* in a case of this type a hypothecary charge comes into existence, after the special collection roll is homologated as required by section 391 and by virtue of the Civil Code, but it then becomes a hypothec upon all the " taxable property held for the payment " within the terms of the resolution and section 244 (1).

Section 249 of the *Education Act* makes reference to " a special hypothecary charge ", but this section must have reference only to general school taxes, as it specifically provides:

> The rates of school assessments shall be uniform upon all taxable property in the school municipality.

This special tax is specifically restricted by the provisions of section 244 (1) to the " taxable property held for payment ". Therefore, I do not think the provisions of section 249 applicable to this case.

But it is contended that no hypothec exists in this case because there is no personal liability. It is urged that though the tax is provided for by the original resolution, it is not in reality a tax until the roll is homologated. Then in as much as the *Education Act* provides by section 424

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that the appellants cannot be assessed, therefore at the time the tax came into being, they could not be personally liable therefor. It is the duty of a Court, so far as it may be reasonably possible having due regard for the language used, to construe a statute so as to give to its provisions that interpretation which will carry out the intent and purpose of the legislature and more particularly, that the sections thereof should be construed in a manner which will make them complimentary rather than contradictory. Therefore, it is desirable that these general provisions contained in section 424 be read in relation to 242-246 and in such a manner as to give effect to all of these sections. This end is achieved by construing section 424 as applicable to general and special taxes imposed after the parties, in the position of the appellant, become occupants of the property within the meaning of this section. In my opinion, that is the construction which must be given to section 424, and therefore, in as much as the resolution in question was passed in 1925 and the appellant acquired the property in 1937, it has no application to the tax provided for by this resolution under 244 (1).

Then attention is called to section 251 and specifically section 251 (3), which provides:

> 251. The following properties shall be exempt from the payment of school assessment:
>
> * * *
>
> (3) Property belonging to or gratuitously occupied by fabriques, or religious, charitable, or educational institutions or corporations legally constituted, for the purposes for which they have been established, and not held by them for purposes of revenue;

This section, in my opinion, having regard to the express provision of section 244 (1) and the reasons above set forth with respect to section 424, has no application to this case. It is a general provision and must, in my opinion, be construed to apply only to general and special taxes imposed after the parties, in the position of the appellants, become subject to assessments, and therefore does not affect the impositions made prior thereto. I here use the word "impositions" because in section 244 (1) and (3) the word "imposed" is used.

It is important to keep in mind that provisions for exemption must be strictly construed. In *Dame Mary Wylie* v. *The City of Montreal* (1), Ritchie C.J. said:

> I am quite willing to admit that the intention to exempt must be expressed in clear unambiguous language; that taxation is the rule and exemption the exception, and therefore to be strictly construed.

Therefore, in the absence of express language, the appellant having purchased the property after it was, in the language of section 244 (1) " taxable property held for the payment ", must pay this tax until the debentures are liquidated.

The school tax is primarily a property tax, but when one reads the Act as a whole, it contemplates a personal liability upon the owner. It refers to the persons liable for the same and provides for the seiuzre and sale of movables in the event of non-payment. The language of Lord Thankerton appears appropriate in reference to this legislation in *Provincial Treasurer of Alberta* v. *Kerr* (2):

> Generally speaking, taxation is imposed on persons, the nature and amount of the liability being determined either by individual units, as in the case of a poll tax, or in respect of the taxpayers' interest in property or in respect of transactions or actings of the taxpayers. It is at least unusual to find a tax imposed on property and not on persons.

Therefore, it appears to me that there is a personal liability within the meaning of the *School Act* upon the appellant as owner of the property with respect to this specific tax.

Throughout, it seems to me that we are concerned mainly with the construction of sections 242-246 of the *Education Act* and as above stated, it is my opinion that any person or corporation purchasing the property which has become " taxable property held for payment " under section 244 (1) must pay the tax, unless there is some statutory provision expressly exempting that person or corporation from the payment thereof. As intimated above, I can find no such provision applicable to this case.

In my opinion, the appeal should be dismissed.

Appeal allowed in part.

Solicitors for the appellants *Marquis & Lessard.*

Solicitor for the respondents: *John A. Aylen.*

(1) (1886) 12 Can. S.C.R. 384, at 386. (2) [1933] A.C. 710, at 718.