LAND VALUE RATING AND EXISTING CONTRACTS

An Important Transvaal Test Case

The Transvaal Ordinance No. 1 of 1916 (an amendment of the Local Authorities Rating Ordinance, 1912) provided for the Rating of Land Values and asserted in Section 12 the principle that all interests in land should contribute to the municipal burden in proportion to their value.

This provision for the levy of rates on each interest in land, contracts notwithstanding, was contested in the Courts as being beyond the powers of the Provincial Government. The parties that took the matter to law were the Marshall's Township Syndicate, Ltd., the ground landlords who sued the Johannesburg Consolidated Investment Co., Ltd., the leaseholders, for payment of the land value rates which the Town Council had levied on the landlords' interest in the land.

The Transvaal Court, the Witwatersrand Local Division, gave judgment in favour of the ground landlords—that the provision in Section 12 of the Ordinance was *ultra vires* and the ground landlords could not be called upon to pay any share of the land value rate, in view of the contract of lease which obliged the leaseholders to pay all rates.

Here the matter would have rested, with both parties satisfied that the judgment had made land value rating a dead letter. As a fact, when the Ordinance was going through the Provincial Parliament, the opponents of the policy made no fight on Section 12, feeling assured it was illegal and would be demolished when tested in the Courts.

The Ratepayers' Association of Johannesburg intimated that they would take the matter further if the lessees (the Johannesburg Company) were not willing to appeal. The outcome was that the lessees appealed to the Supreme Court of South Africa, and the decision of the Witwatersrand Local Division was reversed. The lessors then appealed to the Privy Council in London, which upheld the judgment of the Supreme Court.

It was thus declared by the highest appeal court in the realm that the principle of " proportional contribution " to rates levied on land values was both just and expedient, irrespective of any private contracts between lessor and lessee.

The judgment of the South African Supreme Court was given in 1917 and that of the Privy Council was given in 1920.

We are indebted to a correspondent in South Africa for calling our attention to this test case and one of our colleagues, a solicitor, has looked up the records so that we are able to give the following summary of the decisions by the South African Supreme Court and the Privy Council.

Judgment of the South African Supreme Court

(1917 *A.D.* 662)

JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. (APPELLANTS) *versus* MARSHALL'S TOWNSHIP SYNDICATE, LTD. (RESPONDENTS).

" Section 12 of the Transvaal Provincial Ordinance 1 of 1916 renders null and void any contractual both retrospective and prospective between the person primarily liable for municipal rates and the lessee holding under him, whereby the burden of such rates would be shifted in whole or in part from the former to the latter."

Held that as the power to set aside contracts of this nature was reasonably ancillary to the general power of the Provincial Council under Section 85 of the South Africa Act to make ordinances in relation to municipal institutions the provision in the Ordinance was *intra vires.*

The decision of the Witwatersrand Local Division was reversed.

The facts of this case are as follows :—

The Defendant (Johannesburg Consolidated Investment Co.) held under a Lease from the Plaintiff (Marshall's Township Syndicate) eight stands in Marshall's Township. Clause 7 of the Lease read : " The Lessee shall in respect of the said stand be bound to pay all such taxes as now are or may hereafter be levied thereon by the Government or any Municipal Sanitary or other Board or Body having power to levy the same and in case of a general rate or tax over the property of the Lessors the Lessee shall be obliged to pay his *pro rata* share of the same."

In 1916 the Municipal Council imposed a rate of 2d. in the £ on the Plaintiff's interest and which was paid. The Defendant's *pro rata* share under Section 7 was £7 6s. 8d., which the Plaintiff claimed.

The rate was imposed by virtue of Ordinance 1 of 1916, Section 12 of which reads : " Any provision in a contract existing at the date of taking effect of this Ordinance or hereafter entered into whereby any person primarily liable for the payment of any rate imposed pursuant to this Ordinance in respect of any rateable property seeks to render any person interested under or subsequent to himself as a lessee of such rateable property or any part thereof liable absolutely or conditionally to pay such rates or any part thereof in lieu or instead of himself shall be null and void."

The Defendant invoked the aid of this last section and said he was not liable. The Plaintiff contending that this section was *ultra vires* the legislative powers of the Provincial Council.

A special case was stated as the Trial Judge gave judgment for the Plaintiff, he holding that Section 12 of Ordinance 1 of 1916 was *ultra vires* on the ground that interference with the private contracts of a person liable to pay rates was outside the functions of a municipality so long as the rate was secured and could be readily collected.

For the Appellant

The Provincial Council has full power to deal with matters entrusted to it. The powers of Parliament are exercised not as a limitation of what the Council can do but as an overriding authority. The sole question is " whether the particular exercise of the power of the Council is or is not within the scope of any powers conferred upon it." If it is, then there is no limit to the exercise of the power. The Court below held " any interference is outside the functions of a municipality so long as the rate is secure and can be easily collected."

This test is too narrow, and the real test is whether such contracts (a) interfere in any way with the effect social and economic which these rates may provide or may be assigned to produce, (b) make a source of revenue otherwise available not available in practice.

For the Respondent

The Council has in this case gone too far and interfered in matters outside its scope. The power exercised

must be a power necessary or reasonably ancillary to the power to legislate in relation to municipalities.

Innes, C.J.

". . . This appeal turns upon the validity or otherwise of a clause in Ordinance 1 of 1916 (Transvaal) which voids both retrospectively and prospectively any contractual agreement between the person primarily liable and the lessee holding under him whereby the burden would be shifted to the latter. . . . It will be convenient to trace the course of Transvaal legislation culminating in the Statute referred to.

"Proclamation 38 of 1902 conferred rating powers on the Municipal Council of Johannesburg under which property liable to be rated was not only land but licences, long leases and servitudes, and the person liable was the owner, but in default (for a short period) by the tenant or occupier with a right to deduct it from his rent. Finally, Section 25 wholly invalidated any future contracts whereby the lessee undertook the liability for rates of which the owner was primarily liable. This was repealed by Ordinance 43 of 1903. The basis for valuation and liability were the same, but contained no provision corresponding to Section 25.

"These and various other Measures were repealed by the Provincial Ordinance No. 6 of 1912 for municipalities enumerated and districts by subsequent proclamations. The same basis of valuation and liability was incorporated together with a corresponding Section to that of Section 25, and four years later came the Statute now under consideration and being the 12th Section before referred to. The point to be determined is whether this enactment falls within the jurisdiction conferred upon a Provincial Council by Section 85 of the South Africa Act which empowered those bodies to legislate 'in relation to matters coming within municipal institutions' (the whole subject was fully considered in Municipality of Middleburg *v.* Gertzen, 1914 A.D. 544) where certain principles were laid down.

"The legislative authority conferred by the South Africa Act upon Provincial Councils is an original and not a delegated authority, so that within the limits imposed they may make laws as freely and effectively as the Parliament of the Union, but must include all powers reasonably required according to the conditions and requirements prevailing at the time. But such powers will only be implied as are reasonably ancillary to the main purpose.

"The general authority to make ordinances in relation to municipalities is far-reaching, and any matter which duly comes within its scope may be legislatively dealt with on the basis of what the law-giver reasonably regards as the interests of the community, and the fact that the power so to deal arises by implication from the general language in no way lessens its efficiency (Corporation of Toronto *v.* Canadian Pacific Railway, 1908 Appeal Cases 54; Grand Trunk Railway *v.* Attorney-General of Canada, 1907 A.C. 65; and Tennant *v.* Union Bank of Canada, 1894 A.C. 31).

"Now the incidence of taxation and especially of taxation upon land, is of vital importance to the community, and I entertain no doubt that a power to make ordinances in relation to matters coming within municipal institutions includes a power not only to rate land generally but to discriminate between different landed interests and to ensure so far as it is possible to do so by legislation that a particular class of interest shall bear a special share of the burden. It was not until the Ordinance of 1916 that the power of separation was supplemented by an adjustment of the burden. . . . In my judgment, it was within the competence of the Provincial Legislature to undertake such an adjustment.

"I am not prepared to hold that the enactment of the clause in question was beyond the powers of the Provincial Council. It may be properly regarded as ancillary to the regulation of municipal affairs; and therefore, in my opinion, falls within Section 85 (6) of the South Africa Act. The question of the special case must be answered in the negative.

Solomon J.A.

"If a provision of this nature is *ultra vires* of the Council, it would follow that it attains its objects only by calling in aid the Paramount Authority of the Union Parliament which retains the power to legislate on this as well as other subjects the object of installing Provincial Councils with authority to make ordinances relating to certain subjects being to enable them to deal fully and effectively with those subjects and to relieve the Supreme Legislature of the task of making laws in respect of them.

"I therefore come to the conclusion that the provisions of Section 12 are within the powers conferred upon the Provincial Councils by the South Africa Act."

Judgment of the Privy Council

(1920 *A.C.* 420)

This appeal was from the Supreme Court of South Africa which had reversed a judgment of the Witwatersrand Local Division of the Supreme Court.

In 1916 the Transvaal Province made an Ordinance. Under that Ordinance the owner was the person primarily liable for the payment of rates and "any provision under a contract existing at the date of the taking effect of this Ordinance or hereafter entered into whereby any person primarily liable for payment of any rates . . . in respect of any rateable property seeks to render any person interested under or subsequent to himself as lessee of such rateable property or any part thereof liable absolutely or conditionally to pay such rates or any part thereof in lieu or stead of himself shall be null and void."

The Municipal Council of Johannesburg imposed a rate of 2d. in the £. It was paid by Marshalls as owners. The Johannesburg Company was the lessees and its lease provided: "The lessee shall be bound to pay all such rates and taxes as now are or may hereafter be levied thereon. . . ."

Marshalls having paid the rate sued the Johannesburg Company. The defence was that the covenant was invalidated by the Ordinance. Ward J. decided in favour of Marshalls, holding that the Ordinance was *ultra vires* so that the Council had no authority to invalidate such a covenant for the transfer of the lessor's liability for rates to the lessee.

The lessee appealed and the Appeal Court held that the enactment was *intra vires* and made the covenant relied upon null and void. The Privy Council affirmed that decision. The question turned upon the constitution of the Union of South Africa, which gives power to the Provincial Council in each Province to make Ordinances in relation to specified classes of subjects including Municipal institutions. Such bodies and Municipal institutions cannot have any effective existence without rating powers and it was admitted that Ordinances could be made in relation to rating.

Lord Finlay delivered the judgment of the Privy Council. He stated that the contention was that the authority of the Provincial Council to make rates was exhausted when it had provided for the immediate incidence of the rate by throwing upon the owner the liability; that the immediate incidence of the rate is all that concerns the Municipality, and that it had no authority to interfere with its ultimate incidence under any contract between lessor and lessee.

His Lordship went on to say :—

" It appears to their Lordships that the Appellants' contention on this point is not well founded. The scope of the authority of the Provincial Council cannot be so limited. Authority to deal with rating involves authority to deal with the question of its ultimate incidence as between several persons interested in the property rated. It may be considered to be in the interest of the municipality that the rate should be borne by the owner, and that he should not be permitted to transfer the liability to the lessee. If the Council take this view it falls within the scope of their authority to give effect to it.

" It is a mistake to treat the interest of the Municipality in rating as exhausted when provision is made for the payment of the rate to the municipal authority. The legislative body which has power to deal with rating has power to deal with its ultimate incidence as among those who have rights in the rateable subject, unless prohibited expressly or by implication from so doing. Of such prohibition there is not a trace in the statute creating these Provincial Councils and defining their powers. If, in the opinion of the Parliament of the Union, the power has been exercised in a manner which is inexpedient, the Ordinance can at any time be repealed or modified by Act of Parliament. . . .

" It was urged that Section 12 is retrospective, in that it deals with existing contracts, and that this is enough to render it invalid. Their Lordships are unable to accept this view. The fact that legislation is retrospective may be a strong argument on the inquiry whether it is just or expedient. But if power is given to the Provincial Councils to deal with rating by Ordinance, they have the same power of making any enactment relating thereto with retroactive effect as Parliament would have had, subject always to the power of Parliament to repeal or modify such Ordinances. That the enactment is retrospective does not make it *ultra vires*.

" For these reasons their Lordships entirely agree with the decision of the Appellate Division of the Supreme Court of South Africa."

Recommendations of the Transvaal Leasehold Commission

The policy of land value rating in the Transvaal was promoted by the Johannesburg Town Council not only as " the only just way of raising the Council's revenue " (resolution of 17th December, 1912), but also as the means to break through the leasehold system which had become a serious problem in the town. A lead in this direction was given by the Council by resolution on 4th June, 1912, which declared that " the Provincial Council be asked to make provision when rating legislation is being considered that, notwithstanding any contracts to the contrary, no owner of any rateable interest in land shall be allowed to exact payment of the rate on such interest from any person holding under him."

This proposal that the ground landlords should be called upon to contribute to land value rates in proportion to their interests in the land was embodied in emphatic terms in the recommendations of the Transvaal Leasehold Townships Commission, which was appointed in 1910 and reported in 1912. If we read for the " township owner " and the " standholder," the terms " ground landlord " and " leaseholder " the views expressed in this Report may be applied word for word to conditions in Great Britain. The chief conclusions were :—

" That taxation of site values is the best and only available means to bring about fair and equitable terms and conditions for the conversion of leasehold into freehold in semi-Government and private leasehold townships.

" That the municipalities of the Transvaal be empowered to adopt that system of rating and to take the steps we suggest* to assist standholders to obtain freehold.

" That all agreements allowing the township owner to recover his share of rates from the standholder be cancelled.

" That all agreements be cancelled under which standholders' improvements become the property of the township owner without compensation at the end of the lease, and that the standholder be compensated on the basis of the unexhausted value of his improvements."

Lord Justice Moulton's opinion

" All interests in land," the report declares, " should contribute to the municipal burden in proportion to their value " ; and in support of this point of view, the Commissioners quote the notable statement by the Lord Justice J. Fletcher Moulton, K.C., in his pamphlet *The Taxation of Ground Values* :—

> " It is said—' the principle of rating landowners in respect of their land may be just and desirable so far as future leases are concerned, but inasmuch as the present tenants have covenanted to pay all rates the landlords ought not to be made to pay any during the currency of the present leases.'
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> " Yet the fallacy of this argument is easily made evident. It falls to the ground so soon as it is conceded that the State has a right to impose new taxes. If it is right for the State to impose a tax upon a class of persons, it is right to take all necessary precautions that it shall actually fall upon and be paid by that class and not some other.
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> " Suppose that it is established that the owners of ground values do not bear their fair share of local taxation and that it would be just to impose a further tax upon them, the State has the right and duty to impose it. But in the present state of things the mere imposition of a new rate without further precautions being taken would not be a tax upon the owners of the ground value. It would not avail to make the owners of that class of property pay any portion of the new taxation, but it would only add to the burdens of the already too heavily taxed occupiers. It is therefore not only permissible that the legislature in imposing the new rate should provide that it actually be paid by the landowners, but it is obligatory on it to do so. Without such a provision there would be no justification for the tax, because it would be a further tax upon the occupiers and not a tax upon the landowners, and to say that the legislature cannot so provide is to say that the State can be precluded from imposing just taxes by reason of private arrangements between its members."

To this quotation we add one equally relevant, from the Report of the Select Committee on the Land Values

* In Chapter V. of the Report provisions are proposed whereby every standholder can ascertain the value of the freehold of his stand. He can commence negotiations for the freehold with knowledge of its real value. The Municipality should be empowered to call upon each township owner to state the price he will accept for his interest in each of the stands leased by him—these prices to be compared with the municipal valuation of the corresponding interests, which are to be rated either on these prices or on the municipal valuation, whichever is higher. Leaseholders to be entitled to purchase the freehold of their stands at the total of the prices named by the owners of superior interests.

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up to date, and that as soon as the valuation is complete a uniform tax on all the land in town and country will be imposed without exemptions or graduations.

Copies of this Resolution were later sent to the Chancellor of the Exchequer and to the Press.

Mr T. C. Morris, Labour organizer for Wales, informs us that some weeks ago he was at a miners' meeting in the Maesteg District and that both he and Mr Ted Lewis, one of the leaders of the South Wales Miners' Federation, took the opportunity of putting the case for land values taxation.

We regret to note that our Hon. Treasurer failed to secure re-election to the Rhondda U.D.C.

The members of the Henry George Study Circle finished up the session with a gathering of a social nature which was held at 27, Park Place, on 28th April. Professor W. J. Roberts was present and again kindly volunteered to lead the circle next session.

We are taking every month 24 copies of the *Porcupine*, issued under the auspices of the Manchester Land Values League.

PORTSMOUTH LEAGUE: S. R. Cole, Hon. Secretary, 165, Francis Avenue, Southsea.

At a meeting of the League on 13th May (reported in the *Portsmouth Evening News* of the following day) Mr J. H. McGuigan introduced a discussion on "Land Values and the Budget." He said the Prime Minister, the Chancellor of the Exchequer, the Government and the Labour Party, were thoroughly pledged to the taxation of land values, and there was widespread disappointment that advantage had not been taken in the Budget of what appeared to be a favourable opportunity for beginning a great social reform. Messrs Cole, Satterthwaite, Stoakes, Thirsk and Miller took part in the discussion.

HIGHLAND LEAGUE: I. Mackenzie, Hon. Secretary, The Arcade, Inverness.

The sale of *Protection or Free Trade* continues at a steady rate mostly amongst farmers and crofters. According to the reports appearing in the "stunt" Press, one would think that the whole body of the farmers and crofters in the Highlands wanted protection. But, beyond a few exceptions, the Secretary found on his rounds in Ross-shire, Inverness-shire and Nairnshire that farmers especially want lower rents, reduced taxes, and security of tenure. In course of conversation with two tenant farmers in Ross-shire they freely admitted that protection would not benefit them, but would create a more intensive competition for farms to let. "Only two years since," they said, "when a farm in the neighbourhood was to let, there were 100 applicants." They also said that many farmers had purchased their farms at inflated prices between 1918-21; some had capital, but the largest number had to borrow, which meant a high rate of interest. To-day they had to sell at reduced prices in order to meet the demands of the moneylenders. Many crofters had been forced to buy their crofts and had to depend on the tender mercies of the moneylender. Also they have to pay more in taxes than formerly in rent, appearing on the valuation roll as owner and occupier. There are, however, some farmers and crofters, hide-bound Conservatives, who have always been more or less protectionist in their outlook. But the younger generation of farmers are advancing and learning in the school of adversity that what harms them also harms their fellow-citizen in towns.

LAND VALUE RATING AND EXISTING CONTRACTS

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Taxation (Scotland) Bill 1906, "superior" and "feuer" here taking the place of "township owner" and "stand-holder" in the Transvaal reference.

The Scottish Select Committee, of which the Chairman was Mr Alexander Ure, K.C., then Solicitor-General for Scotland, and later Lord Strathclyde, said:—

> "The conclusion arrived at by your Committee, that a superior is the owner of lands, that feu-duty is truly the rent of land, and that the proposed burden is new in character and incidence, would be sufficient to warrant the inclusion of existing feu-duties in the new rating standard proposed to be set up. But on more general grounds the same result is reached. To the extent of the feu-duty the vassal is not himself in receipt of the full return from the lands. To the extent of the feu-duty the superior shares with the vassal the yearly return from the lands. If so, on what stateable ground can the feuar be asked to pay rates in respect of the full yearly return from the land—a return which he does not and cannot receive? As between a feuar after and a feuar before the measure comes into force, the result of excluding existing feu contracts would be most inequitable. The one would, and the other would not, be in a position to claim relief from the new rate in respect of the amount of his feu-duty. No reasonable ground exists for such inequality of treatment. Nor has the proposal to rate a superior on a feu-duty which he may receive, but has not yet received, and to free him from rating on a feu-duty of which he is in actual receipt, anything at all to recommend it. . . .
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> "If feu-duties are, as seems certain, rent of land, and their drawers owners of rights in land, as seems equally certain, there is no more reason why owners of feu-duties should be exempt than owners of the full right of property in the land. The maintenance of the security depends on the presence and expenditure of the community, and hence those who benefit ought to contribute to that expenditure."

The Transvaal legislation is a precedent of vital importance. It was framed in conformity with the sound principles so clearly expounded by Lord Justice Moulton and Mr Alexander Ure. Upheld in the Courts, it is now firmly and fairly working its way, providing the answer to the contentions that plead, either on the ground of "existing contracts" or other reasoning, in favour of exempting this or that interest in land from its due share of rates or taxes levied on land values.

SWANSEA CITY COUNCIL

The *Herald of Wales*, 3rd April reported that the Swansea Parliamentary Committee had before them a resolution from the Swansea branch of the Independent Labour Party in favour of the Taxation of Land Values.

Sir Percy Molyneux, on the ground that imperial politics should not be introduced into municipal affairs, moved that the letter lie on the table. Mr Edward Harris, whilst in favour of the taxation, also held this view.

Mr W. A. Jenkins: "I am a supporter, but I do not think it opportune for it to be brought here."

Alderman David Williams, M.P., moved that the committee support the resolution, pointing out that land would also have to come in for local rates. By eight votes to seven the resolution was approved.