

MIDDLETON, J.

MAY 12TH, 1916.

*O'GRADY v. CITY OF TORONTO.

Mistake—Money Voluntarily Paid for Taxes under Mistake of Law—Right to Recover—Change in Law by University Act, 6 Edw. VII. ch. 55, sec. 18.

The plaintiff sued to recover taxes paid to the defendants, the city corporation, upon a house erected upon land owned by the University of Toronto and leased on the 15th May, 1878, for a term of 39 years, at an annual rental of \$150—the tenant paying the taxes. The lease was assigned to the plaintiff in 1904.

After the making of this lease, the University Act of 1906, 6 Edw. VII. ch. 55, was passed; by sec. 18, the property of the University shall not be liable to taxation, but the interest of every lessee and occupant of its real property shall be liable to taxation.

Neither the plaintiff nor the defendants had knowledge of this change in the law, and the property continued to be assessed upon the basis of its actual value, and the plaintiff paid the taxes upon the assumption that he was liable to pay as before.

In 1914, the mistake was discovered, and the defendants refunded to the plaintiff the difference between the tax upon the fee and the tax upon the leasehold interest for 1914, but refused to make any further concession.

This action was brought to recover the taxes paid for the years 1907 to 1913; but it was conceded that the Limitations Act would prevent a recovery save for the years 1910 to 1913 inclusive.

The action was tried without a jury at Toronto.

W. H. Irving, for the plaintiff.

Irving S. Fairty, for the defendants.

MIDDLETON, J., said that he had come to the conclusion that the plaintiff must fail, for the payment was made voluntarily, the defendants assuming that there was the right to demand the taxes, and the plaintiff assuming that there was the obligation to pay; both parties being ignorant of the statutory amendment to the law. Equity has never yet gone so far as to afford relief by maintaining an action brought, directly or indirectly, to recover money paid under mistake of law.

The summary of the law found in Benjamin on Sale, 5th ed., pp. 113, 114, relates to the power of the Court to relieve from a contract made in ignorance of the law.