

MOÏSE LEROUX AND OTHERS (PETITIONERS) } APPELLANTS;

1906

*March 23.

AND

THE CORPORATION OF THE
PARISH OF STE. JUSTINE DE
NEWTON (DEFENDANT) } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.

*Appeal—Jurisdiction—Annulment of procès-verbal—Injunction—
Matter in controversy—Art. 560 C.C.—Servitude.*

In a proceeding to set aside resolutions by a municipal corporation giving effect to a *procès-verbal*, the court followed *Toussignant v. County of Nicolet* (32 Can. S.C.R. 353) and quashed the appeal with costs.

Art. 560 C.C. referred to.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, sitting in review, at Montreal, and restoring the judgment of the Superior Court, District of Montreal, by which the petition of the present appellants and the injunction prayed for by them were refused with costs.

The proceeding was by petition to set aside two resolutions of the council of the corporation providing for the opening of a public road according to *procès-verbal* made on 1st September, 1857, and homologated on the 13th of October of the same year, but which had not been put into execution up to the time of the resolutions, in 1904. The petitioners also

*PRESENT:—Sedgewick, Girouard, Davies and Idington JJ.

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asked for an injunction forbidding the execution of the *procès-verbal* and resolutions. In the Superior Court Mr. Justice Dunlop dismissed the petition and demand for an injunction and dissolved the interim injunction which had been issued, with costs. In the Court of Review the judgment at the trial was reversed and it was declared that the *procès-verbal* of 1857 had ceased to be in force and the corporation was enjoined against the execution of the *procès-verbal* and resolutions in question. By the judgment appealed from the Court of King's Bench reversed the judgment of the Court of Review and restored the judgment of the Superior Court.

Beaudin K.C. and *Mignault K.C.*, for the motion, cited *Toussignant v. The County of Nicolet*(1); *McKay v. Township of Hinchinbrooke*(2); *Dubois v. Village of Ste. Rose*(3); *Moir v. Village of Huntingdon*(4); *County of Verchères v. Village of Varennes*(5), and section 24 of the Supreme Court Act, R.S.C. ch. 135.

Belcourt K.C. and *Pelissier K.C.* contra. This case can be distinguished from the cases cited and comes within the rule of *McGoey v. Leamy*(6). The appellants are exposed to being deprived of a portion of their lands over which the proposed road will pass; *Stevenson v. City of Montreal*(7); and an injunction is likewise sought. In this case there is also a charge upon the lands involved in connection with the maintenance of the road by statute labour or special taxa-

(1) 32 Can. S.C.R. 353.

(4) 19 Can. S.C.R. 363.

(2) 24 Can. S.C.R. 55.

(5) 19 Can. S.C.R. 365.

(3) 21 Can. S.C.R. 65.

(6) 27 Can. S.C.R. 193.

(7) 27 Can. S.C.R. 187.

tion. Even if the road was properly laid out in 1857 there has never been any use made of it since that time, the appellants have remained in possession under adverse claims and they have acquired a title by prescription; arts. 2242, 562 C.C.

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THE COURT referred to article 560 C.C. and, considering that the case of *Toussignant v. County of Nicolet*(1) was binding, quashed the appeal with costs.

Appeal quashed with costs.

Solicitors for the appellants: *Bastien, Bergeron & Cousineau.*

Solicitors for the respondent: *Beaudin, Loranger & St. Germain.*

(1) 32 Can. S.C.R. 353.