LA VILLE DE CHICOUTIMI (PLAINTIFF)..... APPELLANT;

AND

JEREMIE LÉGARÉ (DEFENDANT)..... RESPONDENT.

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*Feb. 25.

*May 1.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Municipal corporation—Waterworks—Extension of works—Repairs—By-law—Resolution—Agreement in writing—Injunction—Highways and streets—R. S. Q. art. 4485—Art. 1033a C. C. P.

By a resolution of the Council of the Town of Chicoutimi, on 9th October, 1890, based upon an application previously made by him, L. obtained permission to construct waterworks in the town and to lay the necessary pipes in the streets wherever he thought proper, taking his water supply from the river Chicoutimi at whatever point might be convenient for his purposes, upon condition that the works should be commenced within a certain time and completed in the year 1892. He constructed a system of waterworks and had it in operation within the time prescribed, but the system proving insufficient a company was formed in 1895 under the provisions of R. S. Q., art. 4485, and given authority by by-law to furnish a proper water supply to the town, whereupon L. attempted to perfect his system, to alter the position of the pipes, to construct a reservoir and to make new excavations in the streets for these purposes without receiving any further authority from the council.

Held, reversing the judgment appealed from, (Gwynne J. dissenting), that these were not merely necessary repairs but new works, actually part of the system required to be completed during the year 1892 and which after that date could not be proceeded with except upon further permission obtained in the usual manner from the council of the town.

Held further, that the resolution and the application upon which it was founded constituted a "contract in writing" and a "written agreement" within the meaning of article 1033*a* of the Code of

*PRESENT:—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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Civil Procedure of Lower Canada, and violation of its conditions was a sufficient ground for injunction to restrain the construction of the new works.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) (1) reversing the judgment of the Superior Court, District of Chicoutimi, and dissolving the injunction which restrained the defendant from carrying on certain works on the streets of the Town of Chicoutimi and which had been made absolute by such judgment below.

A sufficient statement of the case appears from the head note and from the judgments reported.

Geoffrion Q.C. and *Belleau* Q.C. for the appellant. The appellants did not enter into any contract with the respondent; they only gave him permission to use the streets of the town for the construction of his aqueduct, not for any benefit that the corporation could derive from such construction. The respondent assumed no obligation towards the corporation or the public, nor did he receive any privilege or franchise. His was a purely private enterprise, under no control from municipal authority. He owes no duty to the corporation and the corporation owes none to him.

In any case, if the corporation is bound by the resolution of 9th October, 1890, the respondent cannot claim more than was given him by that resolution. The works were to be finished in 1892. The council did not pledge the future but restricted respondent to whatever works would be executed at the end of 1892 as a condition of the permission given, and he could execute, after 1892, no other works but necessary repairs. No completions or extensions could be constructed without new authority; he was to be satisfied with the works as completed in 1892.

(1) Q. R. 5 Q. B. 542.

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Stuart Q.C. for the respondent. The resolution authorizing the respondent to construct his aqueduct in the streets of Chicoutimi was *intra vires* and binding. The works complained of were not additions but were repairs necessary for the preservation of the aqueduct and caused no obstruction or nuisance.

With respect to the point taken that power of laying an aqueduct can only be exercised by by-law and not by resolution, the answer seems to be that the town has not purported either to itself establish an aqueduct, with the incidents of taxation, tariffs, etc., nor to transfer such powers to the respondent, but has simply authorized the use of the streets. See 42 & 43 Vict., (Q.) ch. 51, sec. 22. There is in law no essential difference between by-laws and resolutions, except in respect of the publication and notices. The public have had full notice by the performance of the works authorized, and the written application and resolution taken together constitute a valid contract binding on the parties. *Lequin* v. *Meigs* (1); In re *Day* and *The Town Council of Guelph* (2); *Tylee* v. *Municipality of Waterloo* (3); *Fisher* v. *Municipality of Vaughan* (4); Angell on Highways 2 ed. § 25.

The appellant has no interest in the lands upon which the respondent was constructing the works complained of as they had never been dedicated to public uses. *Mingerand* v. *Légaré* (5); *Guy* v. *The City of Montreal* (6); *Fortin* v. *Truchon* (7); *St. Martin* v. *Cantin* (8).

GWYNNE J.—This is an action instituted in the Superior Court of the Province of Quebec, in the

(1) 16 L. C. Jur. 153.
(2) 15 U. C. Q. B. 126.
(3) 9 U. C. Q. B. 590.
(4) 10 U. C. Q. B. 492.
(5) 6 Q. L. R. 120.
(6) 3 Legal News, 402.
(7) 15 Q. L. R. 1[illegible].
(8) 2 Legal News, 14.

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district of Chicoutimi, by the appellants as petitioners on a petition for a writ of injunction to be issued under the provisions of sections 1033 *et seq.* C. C. P.

The petitioners alleged in their petition that there were in the town of Chicoutimi divers streets of which the petitioners were in legal possession for the use of the public, especially a street extending from Taché street to a place situate between numbers 736, 737 and 738 of the official cadastre of the town and extending to the bank of the River Chicoutimi, passing over numbers 772 and 774;

That for several days the respondent had caused and was still causing and intended still further to cause divers excavations and other works to be made in the streets of the said town, especially in the aforesaid street and in the streets called "Caron," "Belleau" and "Taché," of such a nature as to obstruct and damage the said streets to the great injury and nuisance of the public in general without the permission of the petitioners;

That it was urgently necessary that a writ of injunction should be instantly ordered to issue before more considerable works should be executed, and that if not instantly issued the town and the public would suffer great injury. The conclusions of the petition were for a writ of injunction to issue enjoining the defendant to cease and to suspend all works, excavations, etc., in the said streets, and that by final judgment to be rendered upon the said petition the injunction should be made perpetual.

The Superior Court in the District of Chicoutimi granted an interim injunction in accordance with the prayer of the petition, whereupon the defendant pleaded to the merits by peremptory exception among other pleas as follows:

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That at an ordinary session of the council of the petitioners held upon the 9th day of October, 1890, a resolution was adopted by the said council granting permission to the defendant to construct an aqueduct in the town of Chicoutimi, and to place pipes in the streets of the said town at such places as he should judge to be most beneficial according to certain conditions which appear in the said resolution; that conformably to this resolution the defendant constructed an aqueduct in the town in the year 1891, and in every respect in so doing complied with the said resolution, which the council of the petitioners has never revoked nor annulled;

That in executing repairs to his aqueduct which the petitioners wish to prevent the defendant making, he does not exceed the powers granted to him by the said resolution, and that in executing the works aforesaid he does not cause any injury whatever to the petitioners;

That the petition is filed maliciously and for the purpose of ruining the defendant by depriving him of the enjoyment of his aqueduct;

That the council of the petitioners, knowing that it had given permission to the defendant to construct an aqueduct in the town, and that the said aqueduct was in operation in the said town, subsequently, that is to say, in the year 1895, granted to a rival company the privilege of supplying water to the ratepayers of of the town in whose interest the petitioners wish now to take away the rights granted to the defendant; and finally that the defendant does not cause any damage to the streets of the petitioners.

To this defence the plaintiff replied among other things as follows:

1. That no valid permission was granted by the council of the town to the defendant.

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2. That the defendant constructed his aqueduct without right and without any permission from the town.

3. That the council had no right to grant such permission by resolution as it did, and *that the said resolution is void and ultra vires.*

4. That the resolution granting such pretended permission is null on its face. (There are stated objections to the resolution founded upon alleged non-compliance by the council itself with sections 4295 and 4304, R. S. Q.)

5. That the defendant has not fulfilled any of the obligations that he had agreed to fulfil by his petition to the council, and especially that he has not finished his works in the year 1892 as he had undertaken to do, and that they are not yet completed.

6. That his aqueduct works badly and does not work in all the wards of the town that he had agreed upon; and finally,

7. That the aqueduct is really a nuisance and an obstruction to the town of Chicoutimi.

Issue having been joined on the above pleadings, the Superior Court rendered judgment in favour of the petitioners and thereby made permanent the interim injunction which had been granted.

This judgment has been reversed by the Court of Queen's Bench in the district of Quebec in appeal, whereby rendering the judgment which the Superior Court should have rendered, the Court of Appeal has maintained the pleadings of the then appellant, the now respondent, and rejects the petitioners' demand for an injunction for the *considerants* following:

1. That the resolution authorizing the appellant (the now respondent) to use the streets of the town of Chicoutimi to construct there an aqueduct, was *intra vires* of the town council.

2. Considering that the works authorized by the said resolution have been done during the years 1891 and 1892, in the sight of and

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with the knowledge of the municipal councillors and of the ratepayers of the town without any objection in fact made, and considering that the appellant (the now respondent), has ever since distributed water the town.

3. Considering that the works of which complaint is made do not constitute an addition to the aqueduct of the appellant (the now respondent), but were necessary to its preservation and to the exercise of the rights acquired in virtue of the said resolution and of its execution.

4. *Considering that the appellant* (the now respondent) *has not done any injury to the respondent* (the now appellant), *and has done no damage in executing the works which are the subject of the litigation, but on the contrary the works benefit a portion of the ratepayers.*

5. Considering that it has not been established that the appellant (the now respondent), has employed any unlawful means or committed any nuisance ; and

6. *Considering that in the circumstances of the case, the petitioners had not the right to demand the suppression of the works by injunction.*

Without adopting all of the reasons for the judgment of the Court of Queen's Bench in appeal, but those only which are given in the 4th and 6th of the above *considerants*, and for another reason not specified in the judgment, but which I think sufficiently appears in the case, the appeal must, in my opinion, be dismissed upon the authority of the *Attorney General* v. *The Sheffield Gas Consumers Co.* (1), and the principles upon which the judgment in that case proceeded.

The case presented on the record by the petitioners in the present case is plainly one in which the Municipal Corporation of the Town of Chicoutimi seek redress by writ of injunction wholly upon the ground that the acts of the defendant which are sought to be restrained constitute a public nuisance, an obstruction to the detriment of the general public in certain of the streets in the town which are in the possession of and under the control of the municipal corporation.

It might be and I think would be a question calling for further inquiry whether some of the places where

(1) 3 DeG. M. & G. 304 ; 17 Jur. 677.

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the nuisances and obstructions are alleged to have been committed are really, in point of fact, in streets in possession of and under the control of the corporation if the determination of that question was essential to the determination of the present case, but as I think it is not I assume for the purpose of this appeal that all the places where the nuisances and obstructions complained of as having been, or being, or being intended to be, committed, were in streets under the control of the municipality.

In the *City of Vancouver* v. *Canadian Pacific Railway Co.* (1) where the complaint was in respect of acts charged as instituting a public nuisance, we held, in a case where the soil and freehold in the streets were by statute vested in the municipal corporation, that the corporation, that is to say, the inhabitants of the city in their corporate capacity, had no greater or other right of action to complain of a public nuisance committed in the streets than any individual member of the public having occasion to use the streets, and that in such a case of nuisance the public right must be maintained, defended and protected by the Attorney General for the Crown. Now in the *Attorney General* v. *The Sheffield Gas Consumers Co.* (2), the proceeding was by information and bill, at the suit of the Attorney General representing the public interests and of a company called "The Sheffield United Gas Light Company" who complained that their private rights were prejudiced by the acts of the defendants which were complained of.

It was there held that an application for an injunction founded upon a trivial or temporary injury whether in the nature of a public nuisance or of a private trespass could not be entertained by the courts.

(1) 23 Can. S. C. R. 1.

(2) 3 De G., M. & G. 304.

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Here we have to deal only with the interest of the public in a case of alleged public nuisance. Dealing with this part of the case in the *Attorney General* v. *The Sheffield Gas Co.* (1), Lord Justice Turner says:

Looking at the principles on which this court interferes there cannot be any sound distinction between the case of a private and the case of a public nuisance. *It is not on the ground of any criminal offence committed or for the purpose of giving a better remedy in such cases that this court is, or can be called upon to interfere,* but it is on the ground of injury to property that the jurisdiction of this court may rest, and taking it to be on the ground of injury to property the only distinction which seems to me to exist between a public and a private nuisance is this, that in the case of the one it is injury to individual property, and in the other to the property of the public at large. The same principle therefore must guide the interference of the court in both cases, and that principle is this—whether the extent of the damage and of the injury be such as that the law will not afford an adequate and sufficient remedy, and that principle applies to the present case.

The learned judge then taking up the alleged injury to the public, represented in that case by the Attorney General, proceeds thus:

The injury to the public arises from their interest in the streets of Sheffield, and it is said that these streets will be materially impeded by the laying down of the pipes of this company, and by the continual taking up of those pipes which will be necessary for repairing them when once they have been laid down. As to the laying down of the pipes that is a case of mere temporary inconvenience, for when the pipes are laid down the work which has been done is entirely completed, it is done once for all, and if this court is to interfere on the ground that it will be an inconvenience arising from the laying down of those pipes which will occasion a temporary obstruction for two or three days, I am a loss to see how the interference of this court could be withheld in the case (which has been put in the course of the argument) of boards erected in the public streets where houses are under repair, or in the case of making cellars in the public streets, or in the case of obstructing the pavement of the public streets by depositing goods on them. All these are nuisances in a greater or less degree, and if the court is to interfere on the ground that the pavement of the streets of Sheffield will be taken up for two days for the purpose of laying down pipes, the court, it seems to me, will be equally bound to interfere in the cases to which I have referred.

(1) 17 Jur. 677.

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And with reference to what has been said as to the continual taking up of the pavement which would be consequent on these pipes being laid down, it is true that there may be and probably will be, some inconvenience resulting from that, but it is an inconvenience which will not affect the general body of the inhabitants of Sheffield; it is an inconvenience which occurs from time to time to a much less degree than is anticipated by the parties, and which will be temporary, applying only to a particular part of the town, not affecting the general body of the inhabitants to any extent which will render it inconvenient.

Again he says:

It is evident, from the defendants, that there are many of the parties inhabitants of Sheffield who would be and are, no doubt willing and desirous that these pipes should be laid down before their houses, although others might be desirous that it should not be done. It cannot therefore be brought in as a common injury to all. Now something has been said of the danger of the public peace which may arise from the non-interference of this court, but I think that this court cannot suppose that there is an inadequacy of the civil power to preserve the public peace.

And the learned Lord Justice concludes by pronouncing that in his judgment *the case failed in so far as the public was concerned*, and being of the same opinion as to the private demand of the Sheffield United Gas Light Company, he came to the conclusion that both the information and the bill should be dismissed. Lord Chancelllor Cranworth entirely concurred in the judgment of Lord Justice Turner upon the question whether or not such a probability of substantial injury to the rights of the public passing along the streets of Sheffield, or the inhabitants using those streets, had been made out as to make it a reasonable exercise of jurisdiction for the court to interfere to restrain them, he was of opinion that no such case had been made out. "Is," he says,

"the evil of such a nature as to justify the court in interfering? What is the evil? It is said that the defendants are about to tear up the streets to an extent, *one representing seventy, the other one hundred miles.* It may be that before they complete their works they will

have taken up the paving over seventy miles, but they will never have up above twenty yards at the same time, and they will never have that up, they say, for above two days.

Then again he says:

One must look at the quantum of evil at each particular place and each particular moment of time to see if this injunction could be sustained on the ground that there is continuity in the sense of going from one place to another to extend over one or the next two years. I do not see that that is a ground for interfering.

Then upon the question whether the act of the defendants which was the subject of complaint, namely, taking up the pavement, was lawful or unlawful, he says:

If it is unlawful I think it is too small a degree of unlawfulness to warrant this court's interference by injunction,

and in conclusion he says that if he thought the question of the right to an injunction turned upon the question of the lawfulness or unlawfulness of the acts of the defendants in taking up the pavement in the streets he would probably *have wished the matter to stand over until the trial of the indictment*, but adds:

not thinking so but thinking the evil, if any, which does exist is of such a very transient nature that in no one spot, or to no one individual can it be said to be more than a passing and almost imaginary evil, I am of opinion that no case is made out for restraining these parties,

and he concluded by concurring with Lord Justice Turner that *both bill and information* ought to be dismissed. Every word in this judgment is applicable to the present case which in so far as the rights of the public in the case of an alleged public nuisance are concerned, is identical with the *Attorney General* v. *The Sheffield Gas Co.* (1), save only in this, that in that case the public were represented by the Attorney General, the proper officer of the Crown in that behalf, while in the present case they are not. The jurisdiction of the courts in the Province of Quebec proceeding by writ of injunction was introduced into that province

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by R. S. Q., art. 1033*a*, *et seq.*, and there is nothing in these sections which would justify a different judgment from that warranted by the law of England in a like case. The second paragraph of that section has no bearing whatever upon the case of a public nuisance of the nature of the obstruction of a public highway to the prejudice of the rights of the public to the use and enjoyment thereof. It relates wholly to private property and corresponds with the law of England from which no doubt it is taken, and which for the protection of such property interferes when, and only when, absolutely necessary by reason of there being, if there be, no adequate remedy open in law to give relief. The petitioners in the present case make no claim whatever for relief founded upon this subsection. They make no pretension to any right to interfere except upon the contention that the streets in the town are placed for the public benefit and for the public use under the control of the municipality subject to the obligation to keep them in repair. Their contention is expressly that art. 4458 and the following articles of R. S. Q. confer no more extensive powers than were originally conferred by the Imperial statutes 36 and 39 Geo. III, upon the Quarter Sessions and Justices of the Peace, and they appeal to the art. 4616 whereby

the right to use as public highways all roads, streets and public highways within the limits of any city or town in this province

is vested in the respective municipal corporations subject to the obligation to keep them in proper repair, as the article which defines the right of the corporation as affects the streets in the municipality.

Now we have seen by the judgment in the *Attorney General* v. *The Sheffield Gas Co.* (1), that by the law of England the writ of injunction cannot be used for the purpose of abating or preventing the commission of a criminal offence of the nature of a public nuisance by

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the obstruction of a public highway. In so far as relates to the pipes which had been already laid down by the respondent when the appellants filed their petition for an injunction the language of Lord Justice Turner above quoted is peculiarly applicable wherein he says

as to laying down the pipes that is a case of temporary inconvenience, for when the pipes are laid down, the work which has been done is entirely completed.

* * * * * * * * *

Moreover, it is apparent in the present case that no injury to the public has arisen, nor is it suggested that any such could arise by reason merely of the fact of those pipes being suffered to remain in the ground without more. What the true grievance complained of is, that if the work contemplated by the defendant should be completed it would enable water to be conveyed through the pipes to the prejudice, not of the general public interference with whose rights is alleged in the record to be the sole foundation of the application for an injunction, but to the prejudice merely of *the private interests* of the waterworks company to whom the municipal corporation have by by-law granted recently the privilege of laying pipes in the streets for the purpose of supplying the ratepayers of the town with water, in which company, as is alleged, the mayor and other members of the municipal council which has instituted the present proceeding are the principal shareholders, in whose interests and not in the public interest, the application is said to be made. Now whether this interest of the mayor and others of the council be so or be not, there is sufficient evidence upon the record to warrant the conclusion that this proceeding was instituted, not in the interest of the general public, or for the abatement of any real public nuisance by way of obstruction in the use of the streets by the public by reason

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of the works complained of, but in reality in the private interest of the said waterworks company, and by reason of the detriment which might accrue to that company in the event of the respondent completing his contemplated works so as to enable water to be passed through his pipes when laid. Now if the respondent should be indicted as for a public nuisance in respect of the respondent's works so far as executed by the pipes already laid down, and if the jury trying such indictment should be of opinion that this was the motive for the institution of the prosecution, and if they should be of opinion that no real inconvenience to the general public had been caused by the pipes so laid down, or if they should be of opinion (notwithstanding that the corporation may be right in their contention that the resolution of October, 1890, was and is absolutely void and *ultra vires* by reason as is contended of the municipal council not having complied, as they ought to have done with the clause of the Act, (the non-compliance with which made the resolution void and *ultra vires*) that the respondent in doing what is now complained of was acting upon the assumption that the municipal council had complied with all the requirements necessary to make their resolution valid, I cannot say that the jury might not in any of such cases reasonably and very probably acquit the respondent of the offence charged in the indictment; and certainly there is nothing alleged on the record, or adduced in evidence which would justify a court of justice in depriving the respondent of his constitutional right of having the question of his guilt or innocence of such offence, if an indictment should be found, tried by a jury of his country.

Independently of this remedy by indictment for a public nuisance committed in the public streets, it

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cannot be doubted that the municipal corporation have ample power, if they think fit, to take up the pipes already laid down in the streets if the act of the defendant in placing them there be, as is alleged by the petitioners, absolutely without any right or authority whatever, and that they have such possession of the streets by force of the sections of the statute which places them under the control of the municipal corporation as gives to the municipal authorities most ample power to avail themselves of the provisions of section 53 of the Criminal Code, 55 & 56 Vict. ch. 29, and so to prevent the committal of any trespass whatever by any person in the public streets, and so to compel the respondent to take what steps he should be advised to assert title to do the acts under the resolution of 1890, as to which, however, I express no opinion, as I think it unnecessary for the determination of the present case. Now, the case of the petitioners being that every thing already done by the respondent has been done, and every thing still being done and intended to be done by him in the premises is without the license and permission of the municipality, and without any right, power or authority in law whatsoever, it is apparent upon the case as presented by the petitioners themselves that they have most ample powers without any intervention by the court by way of injunction to obtain all that is necessary to redress a nuisance already committed in the public streets under their control, and to prevent any being committed.

The application for a writ of injunction in a case such as the present is alleged by the petitioners to be, is not only without precedent, but wholly unnecessary, and vexatious, as instituted professedly in the interest of the general public, but in reality in the interest of a private company who alone could be prejudiced by the acts of the respondent. For these reasons,

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which include those mentioned in the 4th and 6th *considérants* of the Court of Queen's Bench in Appeal, I am of opinion that this appeal should be dismissed with costs.

The judgment of the majority of the court was delivered by:

GIROUARD J.—Le 9 octobre 1890, le Conseil de la ville de Chicoutimi adoptait la résolution suivante en réponse à la requête de l'intimé pour permission de construire un aqueduc dans la ville de Chicoutimi:—

Proposé par F. S. Caron, secondé par Johnny Fortin et résolu: que ce conseil de la ville de Chicoutimi donne la permission à M. Jérémie Légaré, constructeur d'aqueduc, de construire un aqueduc dans la ville de Chicoutimi, de poser ses tuyaux dans les rues de la dite ville aux endroits qu'il jugera les plus avantageux, de prendre l'eau dans la rivière Chicoutimi à l'endroit qu'il lui conviendra, mais à la condition qu'il commencera les travaux le plus tard le premier juillet mil huit cent quatre-vingt-onze, et les terminera en mil huit cent quatre-vingt-douze.

Cette résolution forme la convention entre les parties, en supposant qu'elle soit légale et *intra vires*.

Légaré construisit son aqueduc dans les délais prescrits; il était même en opération avant la fin de l'année 1892. Mais on s'aperçut bientôt qu'il était loin de donner satisfaction au public. Il manquait d'eau durant les mois de sécheresse; faute d'une pression suffisante, il n'était d'aucune utilité dans les cas d'incendie, et enfin il ne servait que deux quartiers de la ville, l'ouest et le centre, laissant sans eau le quartier est, le plus important de la ville.

Aussi, dès l'année 1895, une compagnie fut formée par les citoyens, au capital de $50,000, dans le but de fournir, sous le contrôle de l'autorité municipale, toute l'eau dont la ville avait besoin. Le plan soumis par cette compagnie, qui s'appela "*La Cie municipale des eaux de Chicoutimi*", fut approuvé le 14 mai 1895 par

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le conseil de ville, qui passa un règlement à cet effet, conformément aux dispositions de l'article 4485 et suivants des Statuts Revisés de Québec.

Légaré, se voyant en présence d'une compagnie rivale puissante, ne tarda pas à se mettre en frais de perfectionner son aqueduc; mais il se vit de suite en face d'embarras nouveaux, vu que les cessionnaires de certains propriétaires qui lui avaient permis verbalement de mettre son principal conduit de la rivière Chicoutimi sur leurs terrains lui refusèrent la continuation de la servitude et coupèrent même son conduit. Il fallut le placer ailleurs, et faire un nouveau tracé, et en même temps il se prépara à perfectionner son aqueduc en construisant un réservoir près de la rue Taché. Des nouvelles excavations sur les rues de la ville, entr'autres sur cette rue et une autre voie publique, appelée "*Cran Chaud*," devinrent nécessaires, et il les commença, sans demander de permission nouvelle.

La ville de Chicoutimi demanda contre Légaré un bref d'injonction, qui fut accordé et maintenu par la cour Supérieure du district, pour trois raisons. 1° L'assemblée du Conseil du 9 octobre 1890 a été irrégulièrement convoquée; 2° Le Conseil ne pouvait accorder à Légaré le privilège qu'il demandait que par règlement conformément aux articles 4485 et suivants des Statuts Revisés et non par une simple résolution; 3° Enfin les nouveaux travaux n'étaient pas de simples réparations, mais de nouveaux travaux et même une extension et une véritable addition, qui auraient dû être faits en 1892. Ce dernier moyen est motivé comme suit:—

"Considérant, d'ailleurs, qu'en supposant que la résolution susdite et le dit consentement tacite eussent été valables et légaux, cette résolution qui imposait comme condition que l'aqueduc fût terminé en mil huit cent quatre-vingt-douze et ce consentement tacite qui ne s'appliquait qu'aux travaux alors faits auraient bien autorisé le défen-

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deur à faire à son aqueduc les réparations ordinaires et nécessaires, mais ne l'auraient certainement pas autorisé à changer, comme il l'a fait, le point de départ et le tracé de son aqueduc et à enlever ses travaux d'une rue pour les poser dans une autre rue, ou même dans un autre endroit de la même rue, sans le consentement et l'autorisation du conseil. "

La cour d'Appel a renversé ce jugement. Je crois qu'elle a fait erreur. Sans me prononcer sur les deux premiers moyens, les nouveaux travaux, même s'ils n'étaient pas une extension, n'étaient certainement pas de simples réparations ; ils faisaient partie des travaux que la résolution du 9 octobre 1890 avaient en vue et ils auraient dû être faits et terminés en 1892. Il fallait une nouvelle permission du Conseil pour les faire après cette date. Il me semble enfin que les nouveaux travaux dans la ville de Chicoutimi, et en particulier ceux sur la rue Taché et le "*Cran-Chaud*", étaient une extension et une addition à l'aqueduc. Il ne s'agit pas de savoir si l'intimé a commis une nuisance sur les rues de la ville, mais simplement s'il s'est conformé en tous points aux termes de la résolution du Conseil qui forme la convention entre les parties. Par la section 5991, par. 1033*a*, il y a lieu à l'émission du bref d'injonction enjoignant de suspendre toute construction, " lorsqu'une personne fait une chose en violation d'un contrat écrit ou d'une convention écrite. "

Je suis donc d'avis d'infirmer le jugement de la cour d'Appel avec dépens, et de rétablir celui de la cour Supérieure, mais uniquement pour le motif signalé plus haut.

Appeal allowed with costs.

Solicitor for the appellant: *L. Alain.*

Solicitor for the respondent: *P. V. Savard.*