

City of St-Léonard (*Expropriating party*)*Appellant*;

and

Narbo Investment Corp. (*Expropriated party*) *Respondent*.

1978: February 15; 1978: May 1.

Present: Pigeon, Dickson, Beetz, Estey and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR
QUEBEC*Expropriation — Cadastre — Cadastral subdivision — Land designated as a street — Dedication — Burden of proof.*

The Public Service Board, being of the opinion that respondent's land, comprised in three cadastral subdivisions expropriated in 1965 for a street, had been the subject of a "dedication", fixed its value at one dollar. Respondent had acquired this land, together with an adjacent area, in 1964. In both the deed of purchase and the cadastral subdivision plan filed by respondent's principal the land is designated as a street. The Court of Appeal set aside the order of the Board; hence the appeal to this Court.

Held: The appeal should be dismissed.

"Dedication" is based on the expressed or presumed intention of the owner. This *animus dedicandi* must be clearly established by the party alleging it, who has the burden of proof. This is the principle set forth by the Court of Appeal of Quebec and approved by this Court in *City of Lachine v. Industrial Glass Company Ltd.*, [1978] 1 S.C.R. 988. In the case at bar the Court of Appeal was correct in holding that the registration of a subdivision plan and the deposit of a book of reference in which a street is indicated and described is not sufficient evidence to conclude that the owner has abandoned this street to the public and to the municipality and that there has thus been "dedication". The matter should be referred back to the competent tribunal for fixing the appropriate indemnity.

City of Lachine v. Industrial Glass Co. Ltd., [1978] 1 S.C.R. 988, aff'g [1977] R.P. 313, applied; *David v. Ville de Jacques-Cartier*, [1959] S.C.R. 797, rv'd [1959] Que. Q.B. 175, *sub nom. Ville de Jacques-Cartier v. Lamarre*, distinguished; *Harvey v. Dominion Textile Co.* (1917), 59 S.C.R. 508; *Gauvreau v. Pagé* (1920), 60 S.C.R. 181; *Lord v. La Ville de St-Jean* (1921), 61 S.C.R. 535; *City of Westmount v. Warmin-ton* (1898), 9 Que. K.B. 101, aff'd (1898), *Coutlee's*

Supreme Court Cases 182; *Shorey v. Cook* (1904), 26 S.C. 203; *Lacombe v. Bélair* (1925), 31 R.J. 540 referred to.

APPEAL from a decision of the Court of Appeal of Quebec¹ setting aside an order of the Public Service Board. Appeal dismissed.

Armand Poupart, Q.C., for the appellant.

Gilles Fafard, for the respondent.

The judgment of the Court was delivered by

PIGEON J.—This appeal, for which leave was given by the Court on October 20, 1975, is from a judgment of the Court of Appeal of the Province of Quebec, [1975] C.A. 595, setting aside an order of the Public Service Board fixing at the nominal sum of one dollar the value of the land comprised in three cadastral subdivisions expropriated on January 22, 1965 for a street called Provencher Boulevard. Respondent acquired the expropriated land together with a rather large adjacent area by a deed executed on August 19, 1964, in which one of the boundaries of this area is stated to be one of the subdivisions in question, “being Provencher Boulevard”. This subdivision and the other two that were expropriated by appellant were, however, expressly included in the land that was sold. The Board’s reason for allowing only a nominal indemnity is expressed as follows in its order:

[TRANSLATION] The registration of a subdivision plan for a piece of land and the deposit of a book of reference in which the roads and streets are indicated and described constitute a dedication of these roads and streets to the public and the municipality; the subdivision thus made may not be altered or modified without the consent of the interested parties, that is, the municipal corporation and the purchasers of lots who have acquired the right to use these streets, with all the servitudes that this includes. (*Ville Jacques-Cartier v. Lamarre*, [1959] Que. Q.B. 175; *Léger v. Dame Lees*, [1959] Que. Q.B. 87; *Roberge v. Martin*, [1926] S.C.R. 191.)

In the case at bar, therefore, the evidence cited shows that subdivisions 31, 32 and 33 of original lot 434 were destined to be public streets by the owner of the said lots in October 1959, and that this destination of the said

¹ [1975] C.A. 595.

lots to be streets was accepted by the preparation and homologation of the general plan of the City of St-Léonard in June 1958.

It should be pointed out immediately that the three cases cited do not have the significance given to them in this order. In *Ville de Jacques-Cartier* a special provision of the city's charter stated: "No indemnity shall be granted for land destined for the making or widening of a road, a street or a lane according to the plan and book of reference deposited in the registry office by the owner of a subdivision . . ." Despite this provision, the Board had awarded an indemnity, not for the land included in the expropriated subdivisions, but for improvements the owner had made. The Court of Appeal, whose decision was affirmed by this Court², held that improvements being strictly accessory must share the fate of the thing improved. The other two cases involved not a "dedication" but a servitude established by destination made by the proprietor.

Few questions of law have given rise to so much uncertainty in Quebec as the application of the English law doctrine of "dedication". When this problem was considered by the full Court in 1917, in *Harvey v. Dominion Textile Co.*³, the decision of the Court of Appeal reversing the judgment of the Court of Review and restoring the judgment of the Superior Court was affirmed on equal division. In two subsequent cases, *Gauvreau v. Pagé*⁴, and *Lord v. La Ville de St-Jean*⁵, the Court did not sit in even number but the differences of opinion on the principles remained.

I do not have to review those cases because, having cited them with a few others, Beetz J.A., as he then was, drew therefrom the following conclusion in reasons that were approved *in toto* in the decision of this Court rendered on September 30, 1977 in *City of Lachine v. Industrial Glass Co. Ltd.*⁶:

² [1959] S.C.R. 797. *sub. nom. David c. Ville de Jacques-Cartier*, aff'g [1959] Que. Q.B. 175.

³ (1917), 59 S.C.R. 508.

⁴ (1920), 60 S.C.R. 181.

⁵ (1921), 61 S.C.R. 535.

⁶ [1978] 1 S.C.R. 988, aff'g [1977] R.P. 313.

[TRANSLATION] Dedication is based on the expressed or presumed intention of the owner: "Dedication must rest upon intention" (per Anglin J. in *Harvey v. The Dominion Textile Co.*, 59 S.C.R. 508, at p. 526). Any litigant alleging it has the burden of establishing it and this burden is not a light one, since dedication "necessarily implies . . . an unequivocal decision on the part of the owner of the land to abandon this land to the public" (per Migneault J. in *Gauvreau v. Pagé*, 60 S.C.R. 181, at p. 198). The evidence must not be ambiguous. It must be clear. The courts do not easily presume the existence of the *animus dedicandi*, which is a form of liberal intention. . . .

The judgment of the Court of Appeal in the case at bar is based expressly on the principle thus formulated by Beetz J.A. With the concurrence of his colleagues, Kaufman J.A. wrote:

I have no doubt that when the subdivision was first prepared, the owner of the land was well aware (even though Respondent's master plan was not yet in official existence) that it would call for a continuation of Provencher Boulevard. Realistically, then, it would have been futile to prepare a plan which did not take this fact into consideration, but this is far from saying that the Respondent could later have the land for a nominal price.

Had lots been sold, had deeds been drafted, had there been any proof that the public made use of these lots without objection by the owner, I might have reached a different conclusion. But as the proof now stands, I am unable to agree with the Board that

[TRANSLATION] The registration of a subdivision plan for a piece of land and the deposit of a book of reference in which the roads and streets are indicated and described constitute a dedication of these roads and streets to the public and the municipality.

This then, is a case where compensation must be paid. Once again I refer to the opinion of Beetz J.A., in *Lachine v. Industrial Glass Co. Ltd.* . . .

In attacking this conclusion, counsel for the appellant cited *City of Westmount v. Warminton*⁷, *Shorey v. Cook*⁸, and *Lacombe v. Bélair*⁹. These three cases dealt with streets open to the public in a development where the owner had sold lots to

⁷ (1898), 9 Que. K.B. 101, aff'd Cout. S.C. 182.

⁸ (1904), 26 S.C. 203.

⁹ (1925), 31 R.J. 540.

third parties after the registration of a subdivision plan showing a street in front of these lots. This is not the same situation as in this case.

Before concluding, I should point out that in this Court the two judges dissenting in *Lachine* did not disagree on the question of "dedication". Their opinion that in that case a nominal indemnity only was due by the municipal corporation was based on the fact that, in their view, the evidence did show that the area set aside by an owner for streets in order to develop a large unsubdivided block has no market value for him. I do not find it advisable to endeavour to ascertain whether the decision of the majority meant that this principle was rejected or that it was inapplicable in that case. I will note, however, that in the instant case the municipal corporation did not contend that the land expropriated for Provencher Boulevard was no more than what the owner necessarily had to sacrifice in order to develop the remaining area. In a report filed by the expropriated party, an expert admits that [TRANSLATION] "*a priori*, a parcel of land designated for use as a street is generally of nominal value", but he goes on to say that this would not be proper in the case at bar. I shall not undertake to indicate what weight should be given when fixing the indemnity to the various factors mentioned in this expert report, or what consequences resulted from the registration of the cadastral subdivision and the making of the master plan to which it is, in a way, related. For the present it is necessary only to affirm the conclusion of the judgment of the Court of Appeal referring the matter back to the competent tribunal for fixing the indemnity.

The appeal should therefore be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Poupart, Thomas, Lesage & Goulston, Montreal.

Solicitors for the respondent: de Grandpré, Colas, Amyot, Lesage, Deschênes & Godin, Montreal.