DAME D. BEDARD (DEFENDANT).....APPELLANT;

AND

OWEN DAWSON (PLAINTIFF).....

AND

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC (INTERVENANT).....RESPONDENTS.

1923
May 17.
June 15.

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

Constitutional law—Disorderly houses—Provincial statute ordering their closing—Intra vires—(Q.) 10 Geo. V, c. 81.

The Quebec statute entitled "An Act respecting the owners of houses used as disorderly houses," 10 Geo. V, c. 81, authorizing a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property and civil rights by providing for the suppression of a nuisance and not with criminal law by aiming at the punishment of a crime.

APPEAL from a decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Supreme Court and maintaining the intervention in this case.

The questions in issue are fully stated in the judgments now reported.

Théberge K.C. for the appellant.

Geoffrion K.C. for the intervenant.

IDINGTON J.—This action was taken by the respondent Dawson under and by virtue of 10 Geo. V, c. 81 of the Quebec Legislature, entitled "An Act respecting the owners of houses used as disorderly houses," which provides, by sections 2, 3, 4, and 7, as follows:—

2. It shall be illegal for any person who owns or occupies any house or building of any nature whatsoever, to use or to allow any person to use the same as a disorderly house. A certified copy of any judgmen convicting any person of an offence under section 228, 228*a*, 229 or 229 of the Criminal Code shall be *prima facie* proof of such use of the house in respect of which such conviction was had.

3. Any person knowing or having reason to believe that any building or part of a building is being made use of as a disorderly house, may send to the registered owner, or to the lessor, or to the agent of the registered owner, or to the lessee of such building, a notice, accompanied by a certified copy of any conviction as aforesaid, if any there be, by regis-

PRESENT:—Idington, Duff, Anglin, Brodeur and Mignault JJ.

(1) [1922] Q.R. 33 K.B. 246.

1923

BÉDARD v. DAWSON.

Idington J.

tered mail to the last known address of the said owner, agent or lessee, as the case may be.

4. Ten days after the mailing of such notice, if such building or any part thereof still continues to be used as a disorderly house, any person may apply for and obtain an injunction directed to the owner, lessor, lessee or occupant of such building, or to all such persons, restraining them, their heirs, assigns or successors from using or permitting the use of such building or any other building for the purposes above-mentioned.

7. If the judge finds that the use of such building as a disorderly house continues, he shall by his final judgment, in addition to all other orders he is by law empowered to make, order the closing of the said building against its use for any purpose whatsoever for a period of not more than one year from the date of judgment.

The power of the legislature to so enact having been questioned, by appellant pleading in defence, the Attorney General for Quebec became an intervenant immediately thereafter. Thereupon the intervenant pleaded, the now appellant answered same, and the intervenant replied.

The case thus constituted was heard by Mr. Justice Maclennan who gave judgment for the respondent and granted the injunction claimed by him as provided in said section 7 of said Act, and for the intervenant with costs maintaining the constitutionality of the Act.

From that judgment the present appellants appealed to the Court of King's Bench for Quebec.

That court seemed to be divided on the questions raised. The majority held that it was not quite satisfactorily proven by the mere production of a registrar's certificate shewing title in appellant that she was in fact the owner at the time of the trial.

Indeed there was evidence tending to the contrary and hence the court sent the case back to the Superior Court to hear evidence and determine that question.

The Court of King's Bench, however, by a majority, there being a dissenting judge on the question, upheld the constitutionality of the Act and dismissed the appeal as to that issue, with costs to the responding intervenant.

Then the appellants brought this appeal here. A question was raised as to the case so disposed of, being ripe for appeal here. The majority of this court held, however, that as between appellant and intervenant the judgment appealed from was final and decided that this court had jurisdiction and should hear the case as to the said issue.

I confess as to some doubt as to that course being entirely the best for if the issue between the other parties should, in the court below, result in the appellant's success on the reference back there, perhaps they should not be subjected to the costs of this hearing. I rather think the case is unique in this regard. The appeal, however, has been taken here by appellants and the question raised is a very important one to have determined if there can exist doubt when applied only as herein.

I have long entertained the opinion that the provincial legislatures have such absolute power over property and civil rights, as given them by section 92 of the B.N.A. Act, item 13 thereof, that so long as they did not in fact encroach upon the powers assigned by the said Act to the Dominion Parliament it would be almost impossible to question any such exercise of power so given unless by the exercise of the veto power given the Dominion Government. That veto power was originally designed to prevent an improper exercise of legislative power by the provincial legislatures.

I, therefore, do not see that if properly interpreted and construed the said Act now in question herein can be said to be *ultra vires*.

There is, however, one aspect of it which rather disturbs me, and that is this: The Act takes certain sections of the Criminal Code as the basis of its subject matter and then proceeds to apply convictions thereunder as the basis of its application.

And if, as might well happen, the keeper of the disorderly house so penalized should also be the owner thereof, and this Act applied in such a case, it would look very much like adding as a matter of course to the penalties imposed by Parliament for the offence in question, when Parliament alone is endowed with the power and has imposed on it in so doing the sole responsibility of determining what is the proper measure of punishment.

That, however, is not the case presented on the facts in question herein. I point it out as being the possible cause of future embarrassment and would have preferred to see its enactment somewhat differently framed.

1923
BÉDARD
v.
DAWSON.
Idington J.

As to the argument addressed to us that the local legislatures cannot legislate to prevent crime, I cannot assent thereto for in a very wide sense it is the duty of the legislature to do the utmost it can within its power to anticipate and remove, so far as practicable, whatever is likely to tend to produce crime; and yet not produce worse forms of it, or tending thereto.

Sometimes we may doubt the wisdom of what is done in that direction and find it in fact productive of crime or a lowering of the usual standard observed by mankind. That possibility may exist in regard to many phases of social life. What we are concerned with herein, however, is merely the question of the power of the legislature so far as the relevant facts raise same. It certainly has, I think, the power called in question herein so far as the relevant facts require. Indeed the duty to protect neighbouring property owners in such cases as are involved in this question before us renders the question hardly arguable.

There are many instances of other nuisances which can be better rectified by local legislation within the power of the legislatures over property and civil rights than by designating them crimes and leaving them to be dealt with by Parliament as such.

Mr. Justice Maclennan and others in the court below have so well presented the exposition of the law as it has been expounded in many well known cases relative to the overlapping of the powers of Parliament and local legislatures, that I need not repeat the citation of cases here.

I think the appeal should be dismissed with costs to the intervenant.

DUFF J.—The legislation impugned seems to be aimed at suppressing conditions calculated to favour the development of crime rather than at the punishment of crime. This is an aspect of the subject in respect of which the provinces seem to be free to legislate. I think the legislation is not invalid.

ANGLIN J.—This litigation began on the 4th of June, 1920. The right of the appeal to this court is therefore governed by the Supreme Court Act as it stood before the

amendments which became effective on the 1st of July of that year.

By the judgment of the Court of King's Bench the main action between the plaintiff and the defendant is remitted to the Superior Court to permit of further proof being adduced in regard to the ownership of the property in question. That is not a final judgment and is therefore not appealable here.

The judgment of the Superior Court maintaining the intervention of the Attorney General on the other hand was confirmed and in that proceeding there is a final judgment upholding the constitutionality of the Quebec Statute (10 Geo. V, c. 81). Substantially for the reasons stated by Mr. Justice Greenshields, I am of the opinion that this statute in no wise impinges on the domain of criminal law but is concerned exclusively with the control and enjoyment of property and the safeguarding of the community from the consequences of an illegal and injurious use being made of it—a pure matter of civil right. In my opinion in enacting the statute now under consideration the legislature exercised the power which it undoubtedly possesses to provide for the suppression of a nuisance and the prevention of its recurrence by civil process.

The appeal fails and should be dismissed with costs.

BRODEUR J.—Nous avons à décider sur cet appel si la loi provinciale de 1915 concernant les propriétaires de maison de prostitution est inconstitutionelle.

Le parlement fédéral, dans sa loi criminelle, a déjà puni par l'amende et l'emprisonnement les propriétaires qui permettent sciemment que leurs maisons soient employées comme maisons de prostitution. (Art. 228 a Code Crim.)

La législature provinciale de Québec, sachant que ces maisons affectaient considérablement la valeur des propriétés du voisinage et rendaient plus difficile la réglementation policière, a jugé à propos d'ordonner leur fermeture si, après avis, les propriétaires ne voyaient pas à y faire cesser le commerce immoral qui s'y faisait.

La jouissance d'un immeuble est une matière concernant "la propriété et les droits civils" qui, par les dispositions de l'article 92 ss. 13 de l'acte de la Confédération est du

1923
BÉDARD
v.
DAWSON.
Brodeur J.

ressort des provinces; et la législature provinciale a le pouvoir exclusif de faire des lois sur cette matière.

Vouloir enlever aux provinces ce pouvoir législatif parce que le parlement fédéral déclare criminelles les tenancières d'une maison de prostitution me paraît être absolument contraire à l'esprit de notre constitution. Nos lois provinciales fourmillent d'exemples et de cas où les lois criminelles sont invoquées pour déterminer les droits et les obligations civiles des citoyens. Certains contrats sont déclarés illégaux par nos lois civiles parce qu'ils violent des dispositions du code criminel. Les articles 984 et 990 du code civil en sont des exemples typiques quand ils déclarent qu'un contrat est fait sans considération et est illégal, si cette considération est contraire aux bonnes moeurs et à l'ordre public, ou si elle est prohibée par la loi. La jurisprudence consacre également ce principe quand elle déclare illégale tout contrat de nature à favoriser la prostitution.

Je pourrais à ce sujet citer-Fuzier-Herman vo. propriété no. 88, où il dit:—

> On admet que l'établissement d'une maison de tolérance est susceptible de donner lieu en faveur des voisins à une action en dommages-intérêts à raison de la dépréciation de valeur locative ou vénale que leur propriété a subie par ce fait.

Il est incontestable que si une personne maintient une maison ou fait une chose qui constitue une nuisance, et que cet acte soit considéré criminel par le parlement fédéral, nos tribunaux peuvent être autorisés par des lois provinciales à émettre une injonction pour mettre fin à ces violations du droit public. La coopération des deux pouvoirs législatifs est désirable dans ces cas-là. J'aurais bien du doute de savoir si le parlement fédéral pourrait ordonner la fermeture d'une maison de prostitution; mais je suis bien convaincu que ce pouvoir réside dans la législature provinciale. Le parlement fédéral peut déclarer criminelle une action quelconque; mais cela ne saurait empêcher les provinces de légiférer sur la même matière en tant que les droits civils sont concernés.

Je n'hésite donc pas à conclure que la législation attaquée par l'appelante est constitutionnelle et que l'appel doit être renvoyé avec dépens.

1923

BÉDARD v. DAWSON.

Mignault J.

MIGNAULT J.—Il s'agit d'un appel contre un jugement de la cour du Banc du Roi en date du 20 décembre 1921. Je tiens à dire que le long délai qui s'est écoulé depuis ce jugement est entièrement le fait des parties. Cette cause paraissait sur nos rôles depuis plusieurs termes, mais on en demandait toujours la remise. Si enfin elle a été plaidée c'est que nous avons cru devoir y insister.

La cause d'ailleurs n'est appelable ici qu'en tant que l'intervention du procureur général est concernée; quant à l'action de la demanderesse, la cour du Banc du Roi l'a renvoyée devant la cour supérieure pour preuve additionnelle et ce n'est pas là un jugement final dont on puisse interjeter appel à cette cour.

L'intervention du procureur général a pour but de combattre la prétention de la demanderesse que la loi 10 Geo. V (Qué.) ch. 81 (1920), est inconstitutionnelle. Cette loi déclare qu'il est illégal pour toute personne qui possède ou occupe une maison de l'utiliser ou de permettre qu'on en fasse usage comme maison de désordre. On peut obtenir à cette fin une injonction d'un juge de la cour supérieure pour prohiber cet usage, et si le juge constate que cette maison continue à être employée comme maison de désordre, il peut en ordonner la fermeture pour toute fin quelconque pendant une période n'excédant pas un an.

C'est cette loi que l'appelante attaque prétendant qu'elle empiète sur la juridiction du parlement canadien sur le droit criminel. A mon avis, il n'y a pas là législation criminelle. La législature veut empêcher qu'on ne se serve d'un immeuble pour des fins immorales; elle ne punit pas l'offense elle-même par l'amende ou l'emprisonnement, mais elle ne fait que statuer sur la possession et l'usage d'un immeuble. Cela rentre pleinement dans le droit civil.

Les jugements des honorables juges de la cour du Banc du Roi sont très complets et j'y adhère pleinement.

Je renverrais l'appel avec dépens.

Appeal dismissed with costs.

Solicitors for the appellant: *Théberge & Germain.*

Solicitors for the plaintiff respondent: *Bercovitch, Calder & Gardner.*

Solicitor for the intervenant respondent: *Charles Lanctôt.*