LA CORPORATION DU COMTÉ D'ARTHABASKA (DEFENDANT)... } APPELLANT;

1921
*May 3
*June 7.

AND

LA CORPORATION DE CHESTER EST (PLAINTIFF)..................

AND } RESPONDENTS.

LA CORPORATION DE ST-NORBERT (MISE-EN-CAUSE).........

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

Appeal—Jurisdiction—Title to lands—Municipal law—Procès-verbal—Opening of road—Expropriation—R.S.C., c. 135, *s.* 46 *"Supreme Court Act."*

In an action to quash a *procès-verbal* passed by a municipal council for the purpose of opening a road and acquiring land by way of expropriation or otherwise, the controversy relates to a title to lands and an appeal lies to the Supreme Court of Canada. Idington J. dissenting. *Murray* v. *Town of Westmount* (27 Can. S.C.R. 579) followed.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court and maintaining the respondent's action to quash a *procès-verbal* and a resolution homologating same, passed by the appellant for the purpose of opening a road and acquiring land by expropriation or otherwise.

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*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

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The material facts of the case are fully stated in the reasons for judgment of the registrar of this court on a motion to affirm jurisdiction, which motion was granted.

THE REGISTRAR.—This is a motion to affirm the jurisdiction of the Court. The facts of the case are in part as follows:—

On the 15th August, 1917, Jos. N. Poirier, named *surintendent spécial* of the municipal council of the county of Arthabaska by virtue of a resolution passed on 13th of June of the same year, made a *procès verbal* for the construction of a road as therein set out. The said *procès verbal* recited the regularity of the proceedings which led up to the same and ordered that a road should be opened and that certain lands should be expropriated for the highway and that the work should be executed by the appellant as provided by the municipal code, but at the cost and charges of the respondent and mise-en-cause. On the 12th September, 1917, this *procès verbal* was homologated and public notice thereof as required by the municipal code was duly given on the 19th September. By by-law No. 60 of the appellants, dated 11th September, 1918, a delay was granted for the completion of the work. On February 19th, 1919, an action was instituted by the present respondents to have the said *procès verbal* declared illegal and *ultra vires* and asking to have the resolution homologating the same annulled on a number of grounds. The case was inscribed *en droit* and argued before Mr. Justice Pouliot, who states in his judgment that the mayors of the respondent and mise-en-cause corporations had concurred in the resolution appointing Poirier as *surintendent spécial* of the projected work and in the resolution of Sept. 12th, 1917, of the appellants which homologated the *procès*

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verbal. The learned judge also says that the respondent corporation, by resolution of 10th Sept., 1917, supported the request of certain inhabitants of the respondent corporation who would be contributories to the expense of this work asking that some amendments should be made to the *procès verbal* in order that the road should be declared a county road and be at the charge of the county for opening and maintenance or at the charge of the petitioners, Boulanger et al, or to declare it a local road at the charge of the Corporation of St. Norbert, the mise-en-cause, and that consequently the plaintiff corporation could not be permitted to ask that the *procès verbal* be declared illegal as it had implicitly admitted its legality.

The said judgment also states that the proceedings in the expropriation had been made in execution of the said *procès verbal,* that arbitrators had been appointed, the lands valued and that indemnities had been accorded to the various proprietors, which indemnities had been paid to the parties expropriated and accepted by them and that the monies so paid amounted to $2,825, and the learned judge concludes his judgment by dismissing the plaintiff's action with costs.

On appeal to the Court of King's Bench, the judgment of Mr. Justice Pouliot was reversed and from this judgment the present appeal is taken to the Supreme Court of Canada. The respondents in this court oppose the motion relying strongly upon the decision of *Toussignant* v. *Nicolet* (1), the head-note of which says:—

> The Supreme Court of Canada has no jurisdiction to entertain an appeal in a suit to annul a *procès verbal* establishing a public highway notwithstanding that the effect of the *procès verbal* in question may be to involve an expenditure of over $2,000 for which the appellant's lands would be liable to assessment by the municipal corporation.

(1) [1902] 32 Can. S.C.R. 353.

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The judgment of the court was pronounced by Sir Henri, then Mr. Justice, Taschereau in which he held that the jurisprudence of the court was against the right to entertain the appeal. He says:—

The fact that the *procès verbal* attacked by the appellants' action may have the result to put upon them the cost of the work in question, alleged to be over $2,000, does not make the controversy one of $2,000. There is no pecuniary amount in controversy; in other words there is no controversy as to a pecuniary amount or of a pecuniary nature. It is settled law that neither the probative force of a judgment, nor its collateral effects, nor any contingent loss that a party may suffer by reason of a judgment are to be taken into consideration when our jurisdiction depends upon the pecuniary amount or upon any of the subjects mentioned in sec. 29 of the Supreme Court Act.

At the conclusion of his judgment he says that certain decisions of the court are authorities against the appellants' claim to an appeal based upon s.s. (g) of sec. 24 of the Act, (now sec. 39 (e)) and proceeds:—

Then this is not a case of a by-law, but of a *procès verbal*. And it is a private action, not a petition to annul under the Municipal Act. The distinction between these two proceedings was made in *Webster* v. *The City of Sherbrooke* (1), and *McKay* v. *Township of Hinchinbrooke* (2).

I am of the opinion that the authority of this decision has been much shaken by subsequent decisions. So far as it holds that where a municipal by-law is attacked in a private action that the judgment quashing the by-law would only be binding as between the parties it is seriously controverted by some of the judges in the case of *Shawinigan Hydro-Electric Co.* v. *Shawinigan Water & Power Co.* (3). In the latter case also the majority of the court held that although the proceeding was one nominally for an injunction, the court would look at the substance of the appeal which in that case was the validity of a contract involving $40,000 and on that ground held that the court had jurisdiction to hear the appeal.

(1) [1894] 24 Can. S.C.R. 52. (2) [1894] 24 Can. S.C.R. 55.
(3) [1910] 43 Can. S.C.R. 650.

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More recently in the case of *Bisaillon* v. *the City of Montreal* (1), it was held in an action brought to annul a resolution of the City of Montreal and for an injunction to restrain the city from proceeding to expropriate lands, that the Supreme Court had jurisdiction under sect. 46 s.s. e of the "Supreme Court Act" ont he ground that it involved title to lands and other matters or things where rights in future might be bound. The most recent case of all is that of *La Ville de La Tuque* v. *Desbien*, decided in February, 1920, and reported shortly in the Supplement to Cameron's Supreme Court Practice, p. 35. At the time of the publication of the supplement the reasons for judgment were not available. I have them now so far as any were delivered, viz., those of Mr. Justice Brodeur (concurred in by Mr. Justice Idington) and of Mr. Justice Mignault. In that case the declaration alleges that the municipal council of La Tuque had passed a resolution ordering the opening of a new road according to the terms of the petition. The declaration alleged that the road had been opened to the public for three or four weeks; the resolution of the council was attacked on the ground that it was illegal and *ultra vires*, as the municipality had no power to buy the land required for the opening of the road; and that the proceeding by way of by-law and resolution was not sufficient to make valid the procedure of the municipal council. Mr. Justice Gibsone in the Superior Court found in favour of the plaintiff and declared the resolution illegal and *ultra vires* and ordered the road to be closed and his judgment was confirmed by the Court of King's Bench. Thereupon an appeal was taken to the Supreme Court of Canada and the respondent moved to quash for want of jurisdiction. Mr. Justice Brodeur says:—

(1) 2 Cameron's Sup. C. Pract. 176.

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S'il s'agissait que de la légalité de la résolution ordonnant l'ouverture d'une rue, il n'y aurait pas de doute que nous n'aurions pas juridiction. *Verchères* v. *Varennes* (1); *Bell Telephone Co.* v. *Québec* (2); *Dubois* v. *Ste. Rose* 3).

Mais cette résolution comporte l'acceptation de donation et l'achat des terrains pour une somme excédant $2,000. Ces terrains, dont le titre était en faveur de la corporation, cessent par là même d'être la propriété de la corporation municipale et les vendeurs ou les donateurs qui ont été mis en cause redeviennent les propriétaires des terrains qu'ils avaient cédés.

Je ne vois pas la différence entre la présente cause et celle de *Murray* v. *Westmount* (4), où nous avons décidé que dans une action pour annuler un règlement pour l'expropriation d'un terrain le litige a trait à un droit immobilier, "title to lands."

Je pourrais aussi citer la cause de *Shawinigan Hydro-Electric Co.* v. *Shawinigan Water & Power Co.* (5), où il s'agissait d'un règlement ordonnant l'achat de certaines propriétés. La majorité de la cour a décidé que nous avions jurisdiction.

La cause de *Bisaillon* v. *La Cité de Montréal* (6) avait été instituée pour annuler une résolution par laquelle la cité se désistait de l'expropriation de certains terrains et limitait son expropriation à d'autres propriétés; et nous en sommes venus à la conclusion que cette cour avait jurisdiction.

La motion doit être renvoyée avec dépens.

Mr. Justice Mignault in his judgment states:—

Je suis d'opinion que l'affaire en litige s'élève à la somme ou valeur d'au moins deux mille dollars.

Le maintien de l'action de l'intimé a nécessairement l'effet de rendre nulles les ventes de terrains que les mis-en-cause ont fait à l'appelante, car s'il a été jugé que la résolution en question est illégale, *ultra vires* et nulle, et s'il est fait défense à l'appelante de donner suite à la dite résolution, il restera décidé que l'appelante n'avait pas le droit d'acheter ces terrains pour l'ouverture de la nouvelle rue, et elle ne pourra pas payer la balance qui reste due sur les achats, car ce serait donner suite à la résolution qu'elle a adoptée. Le montant ou valeur en contestation est d'au moins $2,000.

Pour cette raison je suis d'avis que le droit d'appel existe, mais ce droit d'appel pourrait également se justifier sous l'opération du paragraphe (b) de l'article 46 de l'"Acte de la Cour Suprême," car l'affaire en litige "a rapport à un titre de terres ou tenements".

Je suis donc d'avis que la motion de l'intimé doit être renvoyée avec dépens.

(1) [1891] 19 Can. S.C.R. 365.
(2) [1891] 20 Can. S.C.R. 230.
(3) [1892] 21 Can. S.C.R. 65.
(4) 27 Can. S.C.R. 579.
(5) 43 Can. S.C.R. 650.
(6) Cameron's Sup. C. Pract. Vol. 2, 176.

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The present case, I think, is clearly distinguishable from *Toussignant* v. *Nicolet* (1) in this regard that in the latter the proceedings were taken as soon as the resolution of the municipal council was passed homologating the *procès verbal*. In the present case after homologation the road was laid out, lands were expropriated, moneys paid to the property owners in amount exceeding $2,000 and the lands became the property of the municipality. If the present judgment appealed from should stand it would mean that the municipality will have no title to the lands expropriated. There is therefore clearly a title to lands involved and a sum of money exceeding $2,000 and these are not matters collateral to the *procès verbal* but are the very substance and essence of the matter in controversy between the parties.

I am therefore of opinion that there is jurisdiction in this court to hear the appeal. At any rate the question of jurisdiction is sufficiently doubtful, putting it most favourably to the respondent, that I conceive it my duty to allow the application because no special prejudice will arise to respondent. He still has the right to move to quash the appeal for want of jurisdiction at the opening of the court. April 8th, 1921, E. R. Cameron, Registrar.

Alleyn Taschereau K.C. and *W. Girouard* for the motion.

Antonio Perreault K.C. contra.

THE CHIEF JUSTICE.—I concur with Mr. Justice Mignault.

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

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IDINGTON J. (dissenting).—This suit being essentially nothing but a struggle between appellant, a county municipality, and the respondents, which are other municipal corporations within same, as to the validity of a *procès verbal* of the appellant and proceedings pursuant thereto for the purpose of constituting a county highway and of imposing the burden of creating and maintaining same, or respective parts thereof, upon the respondents, I fail to understand how either the title to land or the amount which might be involved in the execution of the project if carried out, are at all in question. Probably some day we will hear the argument put forward that we have jurisdiction because two thousand dollars had been spent by the parties in litigation and that hence it is necessary to see which party we should direct to pay that sum.

I am of the opinion that we have no jurisdiction to entertain the appeal and that the affirmation by the registrar's order of such right must be reversed with costs of the application before him and of this motion.

DUFF J.—I concur in the result.

ANGLIN J.—I concur with Mr. Justice Mignault.

MIGNAULT J.—L'intimée demande la cassation de cet appel, prétendant que nous sommes sans juridiction pour en connaître. Le savant greffier de cette cour, M. Cameron, sur une motion de l'appelante, a déclaré que nous avions juridiction, mais l'intimée n'en demande pas moins que l'appel soit cassé.

L'action de l'intimée, rejetée par la cour supérieure mais maintenue par la cour du Banc du Roi, est en cassation d'un procès-verbal homologué par le conseil

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de l'appelante, et par ses conclusions l'intimée demande l'annulation du procès-verbal et de la résolution d'homologation. Le procès-verbal ordonne l'ouverture d'un chemin et l'acquisition à l'amiable ou par expropriation du terrain nécessaire, et la résolution du conseil de l'appelante, en homologuant ce procès-verbal, ordonne par là-même cette acquisition ou cette expropriation. L'intimée a attendu si longtemps avant d'intenter son action que le terrain à être occupé par le chemin avait été, lors de la signification des procédures, non seulement exproprié mais payé, la dépense totale se montant à $2,825.00.

Je suis d'opinion qu'il y a lieu d'appliquer ici la décision de cette cour dans *Murray* v. *The Town of Westmount* (1). Dans cette dernière cause une résolution du conseil municipal ordonnait l'élargissement d'une rue et l'acquisition ou l'expropriation du terrain requis. Ici c'est une route qu'on veut ouvrir et le procès-verbal et la résolution d'homologation décrètent l'acquisition à l'amiable ou par expropriation de l'emplacement du chemin. Il y a donc parité complète entre les deux espèces, et puisque dans *Murray* v. *Town of Westmount* (1) nous avons décidé que nous avions juridiction, le litige se rapportant "à un titre, à des terres ou tenements" (art. 46, "Loi concernant la cour suprême"), il faut nécessairement en arriver à la même conclusion ici.

Je suis d'avis de renvoyer la motion de l'intimée avec dépens.

Motion dismissed with costs.

(1) 27 Can. S.C.R. 579.