1918

*Nov. 14.
*Dec. 23.

MARIA BISAILLON (PLAINTIFF).... APPELLANT;

AND

THE CITY OF MONTREAL (DEFENDANT)..... } RESPONDENT.

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

Expropriation—Error in notice—Right to desist—Articles 275 and 1437 C.P. (Que.)—2 Geo. V. c. 56, s. 33—R.S.Q. (1909) articles 7581 et seq.

Held, Idington J. dissenting, that the party expropriating has the right to desist from expropriation proceedings or to amend same, if a serious error is found in the notice of expropriation, such error being a cause of nullity as to the substance of the object of the expropriation.

Per Davies C.J.—Under the special terms of 2 Geo. V. ch. 56, sec. 33, it was *ultra vires* of the city respondent to expropriate more lands than required for the extension of the mentioned street, and, therefore, the city had not only the right but the duty to desist from the expropriation of lands not necessary for such extension.

Per Idington J. (dissenting)—A landowner, served with a notice to treat by any legal entity upon which the legislature has conferred the right of expropriation, can apply for a mandamus, and it is his only proper remedy, to compel that party so asserting its power to proceed, by the appointed means given, to determine the amount of compensation the landowner may be entitled to.

Per Brodeur and Mignault JJ.—As the general law governing expropriations in Quebec (R.S.Q. (1909) Articles 7581 *et seq.*,) referred to in the special statute governing the present proceedings, is designated as a "*Matter relating to the Code of Civil Procedure*" (R.S.Q. (1909) Title XII.,) in the absence of any provision in the said general law regarding discontinuance of expropriations, reference may be made to the Code of Civil Procedure; and under the terms of Articles 275 and 1437 C.P., the respondent had the right to discontinue its expropriation proceedings.

Judgment of the Court of King's Bench (Q.R. 26 K.B. 1), affirmed, Idington J. dissenting.

APPEAL from the judgment of the Court of King's Bench, appeal side (1), reversing the judgment of the

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

(1) Q.R. 26 K.B. 1.

Superior Court, District of Montreal, and dismissing the action with costs.

On the 30th June, 1913, the city respondent served a notice to the appellant that, according to 2 Geo. V. ch. 56, sec. 33, it was decided to expropriate lots 509 to 517 and 526 to 528 marked on a certain plan, being subdivisions 3, 4, 5, 6, 7, 8, 11, 12 of lot No. 168. Arbitrators were named and sworn. It was then ascertained by the respondent that, upon the part of the property not necessary for the extension of the street, there was situated an extensive building which did not appear upon the expropriation plan. Thereupon, the respondent served upon the appellant a discontinuance of the expropriation proceedings already commenced and at the same time served a new notice of expropriation for the lots 513, 515, 517 and 528 only, being part of subdivisions 3, 5, 6, 7, of lot No. 168 specially required for the widening of the street. On the 24 January, 1914, the appellant served a petition for an interlocutory injunction to enjoin the respondent from conducting any proceedings under the second notice of expropriation.

Proceedings, by way of mandamus, to force the respondent to proceed under the first notice of expropriation, were also instituted; but, by consent of the parties and to avoid costs, they were left in abeyance until a final decision in the present action would be rendered.

The judgment of the Superior Court, Guerin J. maintained the injunction, upon the ground solely that the notice of expropriation and the proceedings thereunder had not been given or undertaken within the twelve months mentioned in 2 Geo. V. ch. 56, sec. 33.

Aime Geoffrion K.C. and *Paul St. Germain K.C.* for the appellant.

1918

BISAILLON v. CITY OF MONTREAL.

The Chief Justice.

A. W. Atwater K.C. and *J. A. Jarry K.C.* for the respondent.

THE CHIEF JUSTICE.—The controversy in this appeal relates to expropriation proceedings taken by the City of Montreal for the extension of Palace street (St. Joseph boulevard) in St. Denis ward from north-eastern boundary of Laurier ward to Papineau avenue.

The authority for such extension was first granted by the legislature in 1911 and was permissive only and not compulsory.

In 1912, however, the legislature amended the enactment of 1911 and made the expropriation of the lands necessary for the extension of the boulevard compulsory upon the city either by mutual agreement with the owner or by expropriation within twelve months from the sanctioning of that Act. This latter Act came into force on April 3rd, 1912. The necessary resolution for the extension of the boulevard passed the city council in March, 1913, which approved of the Barlow plan of January, 1913. The appellant was notified by the city of its intention to expropriate a certain part of her property described in the notice as lots bearing the following numbers shewn on the plan prepared by John R. Barlow, Nos. 509, 511, 513, 514, 515, 516, 517, 526, 527 and 528.

As a fact the only lots of those specified as shewn upon the plan necessary for the extension of the boulevard were lots Nos. 513, 515, 517, and 528. The other lots were not necessary for the extension of the boulevard and the four which were so necessary were of a depth back from the boulevard of seven feet which was all of the appellant's land required for the extension. The remaining lots in the rear of the four lots mentioned and which ran back one hundred feet further were not so required.

The parties not having been able to come to a mutual agreement as to compensation to be paid appellant, arbitrators were appointed when, after two or three meetings had been held, it was discovered that the plan of January, 1913, which the council had approved of, did not shew a large apartment house facing on Drolet street which had been built by appellant on some of her lots embraced within the expropriation notice in the rear of those actually required for the proposed extension of the boulevard. The proceedings of the arbitrators were then adjourned *sine die* in consequence of the declaration of the owner's attorneys that there was an error in the plan.

The city authorities came to the conclusion that a plan should be prepared according to which the expropriation should be limited to the part of appellant's lands actually required for the widening of the boulevard. A notice to that effect was served upon the appellant and notice given to her that the city desisted from its first notice of expropriation and confined such notice to such part of her lands as laid within the street or boulevard area.

Proceedings were then instituted by the appellant in the Superior Court asking for a declaration that the resolution of the city council which directed the change in the expropriation proceedings and limited them to the strip of appellant's lands lying within the street area and the notice given by the city to her that the city desisted from its first notice of expropriation and confined itself to the four lots actually required for the street extension were one and all illegal and *ultra vires*. After a hearing, the Superior Court decided against the city and the Court of King's Bench on appeal (1), reversed that judgment holding that under

(1) Q.R. 26 K.B. 1.

1918

BISAILLON v. CITY OF MONTREAL.

The Chief Justice.

the circumstances and in view of the errors shewn to exist in the notice of expropriation the city was within its right in desisting, as it did, and in confining its expropriation proceedings to those lots of the appellant shewn upon the plan as actually necessary for the proposed extension of the street, namely, seven feet in depth and comprising lots 515, 513, 517, and 528 as shewn upon the plan.

The points argued before this court were mainly whether the city had power to desist from an expropriation proceeding already commenced because of an alleged serious mistake or error in the notice of expropriation given by it to the owner and the plan on which the notice was based.

Mr. Geoffrion contended that once the notice of expropriation is given and the sum offered as compensation is refused the right to desist from expropriation is gone and much more so when arbitrators are appointed to assess or decide the compensation to be paid. He further contended that this rule or conclusion applied as well to public municipalities as to private corporations.

In the view, however, which I take of the proper construction of the statute authorizing this expropriation, I do not think it necessary to discuss at length Mr. Geoffrion's general proposition. Suffice it to say that I agree with the judgment appealed from and with that part of my brother Brodeur's reasons in this court to the effect that grave and serious error when shewn in the notice of expropriation would be open to amendment and that to that extent at least the expropriator would have power to desist and amend.

The grounds, however, on which I base my judgment are that the statute which governs in this case being a special one imperatively requiring the city to expropri-

ate or amicably purchase certain lands within a limited time for the special purpose of extending a particular boulevard from one specified point to another, and expressly limiting the extent of the lands to be taken to those necessary for the extension, and further enacting that if recourse is had to the expropriation power it shall be taken under articles 7851 and following of the Revised Statutes of 1909, thus excluding the general charter powers, must be strictly followed; that the city had no power to go beyond the limited powers given them by this Act, and that any attempt to expropriate more or other lands than those defined as necessary in the statute to carry out its object and purpose was *ultra vires*.

The statute in question reads as follows:—

32.—Section 32 of the Act 1 Geo. V. (2nd session), chapter 60, is amended by striking out paragraph b.

33.—The city shall acquire by mutual agreement or expropriate under articles 7581 and following of the Revised Statutes, 1909, within twelve months from the sanctioning of this Act, for the purpose of extending Palace street (St. Joseph boulevard) in St. Denis ward from the northeastern boundary of Laurier ward to Papineau avenue, all the immovables it may need for such purpose with the exception however of convents, schools, churches and parsonages; and sell by auction, in whole or in part, the lands thus acquired by mutual agreement or by expropriation, on either side of the said boulevard, the whole according to the plan prepared by John R. Barlow on February 25th, 1911, and a copy of which shall be deposited in the office of the city clerk, or according to any other plan approved by the city.

No one shall erect any buildings on the lines comprised within the lines given on said plan within twelve months from the sanctioning of this Act, unless the City of Montreal, having become proprietor of the whole or of part of the said Palace street (St. Joseph boulevard), allows it.

The amount required to pay the cost of such improvement shall be charged to the loan fund which the city has at its disposal and the proceeds of the sale of such lots and of the materials of the demolished buildings shall be applied to the repayment of the same amount to the loan fund.

Now it does seem clear to me that in this statute compelling the city to open up and extend the street or boulevard within twelve months from the sanction-

1918
BISAILLON
v.
CITY OF
MONTREAL.

The Chief Justice.

ing of the Act, the legislature definitely fixed a limitation upon the powers given to the city, and that limitation was that the city should acquire

> for the purpose of extending Palace street (St. Joseph boulevard) in St. Denis ward from the northeastern boundary of Laurier ward to Papineau avenue all the immovables it may need for such purpose.

Now surely that language is plain, clear and unequivocal. It is the controlling language of the statute. It gives power to acquire such immovables as may be needed for the extension but no more. The subsequent language of the section authorizing

> the sale by auction in whole or in part of the lands thus acquired on either side of the said boulevard

must be rejected as being altogether inapplicable and without any meaning. They were doubtless inserted by the draftsman under the impression that the general powers of the city under its charter when opening or extending streets or boulevards to purchase or expropriate more lands on each side of the street or boulevard than were required for the street or boulevard extended to the expropriation provided for in this special Act.

But these general powers were clearly not intended to be given and were not given in this special Act enacted for a single and special purpose and being compulsory on the city and not optional.

If doubt could exist on the point arising out of the city's charter, I would call attention to the fact that the powers in the special statute given were not to be exercised under the city's charter which gives these special powers of expropriating lands on each side of any street being opened or extended, but are expressly given to be exercised under articles 7581 and following of the Revised Statutes, 1909, which do not give such powers.

I am of the opinion, therefore, that the powers of the

city in this case to expropriate were expressly limited to the

immovables needed for the purpose of extending Palace street to Papineau avenue,

and that the attempt under the special statute here in question and the general powers of expropriation under article 7581 of the Revised Statutes, which is read into the special statute, to expropriate more land than was required for the purpose of the street extension were so far as such an attempt was made *ultra vires* of the city. I think when this fact was discovered it became not only the right but the duty of the city to desist and to confine the proceedings of the arbitrators to those lands which the statute authorized them to expropriate.

I would dismiss the appeal with costs.

IDINGTON J. (dissenting)—A long line of authorities beginning with *The King* v. *The Commissioners for improving Market Street, Manchester*, reported in a note to *The King* v. *Hungerford Market Company* (1), and the judgment in that case, clearly establishes the right of a landowner served with a notice to treat by any legal entity upon which the legislature has conferred the right of expropriation, to apply for a mandamus to compel that party so asserting its power to proceed, by the appointed means given, to determine the amount of compensation the landowner may be entitled to.

In *Morgan* v. *Metropolitan Railway Co.* (2), Kelly C.B. delivering the judgment of the Appellate Court (then known as that of the Exchequer Chamber), said:—

Ever since the case of *Rex* v. *Hungerford Market Company* (1) it has uniformly been held that wherever a company is entitled to take

(1) 4 B. & Ad. 327. (2) L.R. 4 C.P. 97, at page 105.

1918
BISAILLON
v.
CITY OF
MONTREAL.
Idington J.

land compulsorily under the powers of an Act of Parliament, if they give notice of their intention to take the land, that is an exercise of their option from which they cannot recede, and the notice operates as a contract or an undertaking by them to become the purchasers. That case was decided in the year 1832, and it has never yet been questioned.

That of course is only a comprehensive declaration of English law upon the subject. I am, however, unable to find that the law of Quebec differs therefrom in the slightest degree.

Counsel for the appellant told us in argument that the pursuit by her of that remedy was merely held in abeyance pending this appeal.

I am entirely at a loss to understand this circuitous way of proceeding when the direct method of asserting her right (if any) was open to her.

Indeed, I have come to the conclusion that it should not be tolerated.

I have the gravest suspicion that the judgment appealed from is founded upon reasons which are not maintainable; but I do not think a definite opinion thereupon ought to be expressed further than incidentally necessary to present the reasons for the conclusion I have reached, lest by doing so we add to the confusion of thought this peculiarly circuitous method appellant has taken by way of asserting her right has evidently produced.

Let us take the suggestion in Mr. Justice Cross' judgment that there is to be made a distinction between the effect of expropriating powers given a railway company and the service of the like power by a municipal corporation, and see if it is well founded in light of the decisions I have referred to.

It happens that of these very decisions to which I have referred, the first named and *Steele* v. *The Mayor of Liverpool* (1), and *Birch* v. *St. Marylebone Vestry* (2),

(1) 14 W.R. 311 ; 7 B. & S. 261. (2) 20 L.T. 697.

relate to the identical subject matter of expropriation for purposes of opening new streets with which the case in hand is concerned.

There is, leaving aside expropriation for the Crown, only one case that I have been able to find which has the semblance of maintaining such a distinction as sought to be made. That is the case of *Reg.* v. *Commissioners of Woods and Forests* (1), in which, having regard to the funds at the disposal of the commission and the limited purposes of the Act there in question, the court could easily see its way to hold the defendants entitled to withdraw the notice. To have refused to so hold would have resulted in the court forcing a public body to do that which was *ultra vires*, or at all events have been improper.

When that case was relied upon in the two which I have cited immediately preceding my citation of it, the respective courts concerned shewed how very limited an application the decision was capable of.

Moreover, the course of legislation relative to municipalities in many jurisdictions has been to provide expressly against such like contingencies as arise in the proceedings in question herein.

I express no opinion upon the question of whether or not such like implication may be found in the legislation relevant to anything involved in the rights of the parties hereto. I am only concerned in demonstrating that the appropriate remedy, and indeed the only proper remedy, the appellant has, if any, is by way of mandamus, and that there is grave reason to suppose that there is, or may be, error in the judgment appealed from, and none the less so when the unsuitable injunction method of procedure is allowed as possibly right. Of course, if it were quite clear that she had nothing to

3

(1) 15 Q.B. 761.

1918
BISAILLON
v.
CITY OF
MONTREAL.
Idington J.

complain of we perhaps should refrain from any interference no matter how objectionable the form of procedure as such might be.

The case presented is far from that both as to law and facts and it is important no such precedent should be made.

I think she should be given an opportunity, if so advised, to try that out and to do so freed from any prejudice founded upon anything that has transpired.

I may point out that in *Lind* v. *The Isle of Wight Ferry Company* (1), and in *Adams* v. *London & Blackwall Railway Co.* (2), the Court of Chancery in England refused to exercise any of its powers to aid a plaintiff situated similarly to the appellant.

These decisions were given at a time when that court had at least as ample powers to enforce by injunction the observance of a party's rights as it seems to me can fall within the provisions of the Code of Civil Procedure in Quebec providing for injunction. And they are decisions by a court of which the tradition exists that it was inclined to extend its jurisdiction when it found it necessary in order to do justice.

When we find it in such cases as these, so closely analogous in principle to that now at bar, refusing to assert its supposed power and referring the litigant to the need to seek his relief in the remedy of mandamus alone, I feel we may well follow such precedents.

The appellant may have the right to enjoin temporarily the respondent from proceeding under its new notice until she has had an opportunity of trying out the questions involved by way of an application for a mandamus.

I would therefore allow the appeal without costs

(1) 7 L.T. 416; 1 N.R. 13. (2) 2 Mac. & G. 118.

and modify the judgment accordingly and substitute for the reservation by the judgment of the Superior Court of her right to proceed for damages, the right to proceed for a writ of mandamus, if so advised, without prejudice arising from the proceedings had herein.

There does not seem, considering the leisurely way things were done by those concerned, much reason to fear that the city would, in face of a proceeding for a writ or order of mandamus, which I hold to be the proper course in such a case, insist upon proceeding immediately under its new notice. But lest it might be likely to do so, an interlocutory injunction could have been had, no doubt. In allowing the appeal I would grant such interlocutory judgment until the proceedings for mandamus terminate, or such reasonable time as should enable the appellant to terminate same.

ANGLIN J.—I have had the advantage of reading the opinion of my brother Brodeur, in which I believe my brother Mignault concurs. While in accord with the conclusion reached I hesitate to commit myself unreservedly to the ground on which my learned brother rests his judgment because of its very far reaching effect. As I understand it, he imports the rules of the code of procedure in matters not expressly provided for by the general law of the province governing expropriations (R.S.Q. arts. 7581, *et seq.*) into all proceedings had under it, merely because such expropriations are grouped with some other subjects in the Quebec statutes under the heading "Matters Relating to the Code of Civil Procedure." I am satisfied, however, that in the present instance on the ground of error in the substance of the object of the expropriation the respondent would be entitled to the relief which the judgment in appeal accords to it. Any amendment

1918

BISAILLON v. CITY OF MONTREAL.

Anglin J.

necessary to sustain the judgment on that ground could and should be made. "Supreme Court Act," section 54.

BRODEUR J.—En 1911 la législature de Québec a autorisé la ville de Montréal à exproprier dans l'espace de deux ans les terrains requis pour prolonger le Boulevard St-Joseph du quartier Laurier à l'Avenue Papineau, suivant un plan préparé par John R. Barlow le 25 février 1911.

En 1912 la législature a amendé la législation de 1911 et a déclaré que la ville *devrait* acquérir ou exproprier, non pas d'après les dispositions de sa charte, mais d'après les articles 7581 et suivants des Statuts Refondus de Québec, tous les immeubles dont elle aurait besoin pour ce prolongement du Boulevard suivant le plan Barlow ou suivant tout autre plan approuvé par la ville. Ce qui était en 1911 une autorisation d'exproprier devenait donc par la loi de 1912 une obligation formelle imposée à la ville de prolonger ce boulevard jusqu'à la rue Papineau. Cependant l'expropriation, au lieu de se faire suivant le plan Barlow, pouvait se faire suivant tout autre plan que la ville adopterait et l'expropriation, au lieu d'être faite suivant les dispositions de la charte de la cité, serait faite suivant la loi générale des expropriations.

L'appelante, Maria Bisaillon, était propriétaire de quatre lots de terre ayant front sur le boulevard projeté. Ces quatre lots de terre portaient respectivement les numéros 3, 5, 6 et 7 du numéro 168 du cadastre du village de la Côte St-Louis. Elle était également propriétaire des lots 8 et 11 du même numéro 168. Ces derniers lots étaient situés à l'arrière des premiers lots: et ils avaient front sur une rue transversale, appelée rue Drolet. La Cité n'avait besoin pour le

Boulevard St-Joseph que de sept pieds de large, au front des lots 3, 5, 6 et 7.

En vertu des dispositions générales de sa charte (art. 425), dispositions qui paraissent avoir été implicitement reconnues dans la loi de 1912, la cité de Montréal est autorisée à exproprier non-seulement les lisières de terrain dont elle a besoin pour l'ouverture et l'élargissement d'une rue: mais elle est autorisée à exproprier plus que ce qu'il lui faut pour l'ouvrage projeté. Dans ce dernier cas, elle doit revendre le terrain qu'elle a exproprié mais qu'elle n'utilise pas. Ce système peut être, dans certains cas, très avantageux: parce que parfois l'expropriation du front d'un lot peut occasionner la démolition d'un bâtiment et alors donner lieu à des réclamations très élevées. Dans ce cas, il devient plus avantageux d'acquérir tout le terrain pour revendre ensuite la partie dont la ville n'aurait pas besoin.

Au sujet de l'élargissement du Boulevard St-Joseph, l'ingénieur Barlow avait, le 25 février 1911, préparé un plan par lequel l'assiette du Boulevard serait de cent pieds de large: et, en outre de cela, il indiquait que cent pieds de terrain de chaque côté du boulevard projeté devait être exproprié. C'est ce plan qui était devant la législature et auquel il est référé dans la législation.

Le 27 janvier 1913, un nouveau plan fut préparé et là encore, du moins en tant que les propriétés de l'appelante sont concernées, l'expropriation projetée couvrait non-seulement le terrain nécessaire pour l'assiette du Boulevard lui-même mais encore cent pieds de plus. Ce plan fut approuvé par le conseil de ville le 10 mars 1913 et une résolution a été adoptée autorisant l'expropriation de tous les terrains néces-

1918

BISAILLON v. CITY OF MONTREAL.

Brodeur J.

saires pour élargir et prolonger la rue suivant ce plan du 27 janvier 1913.

Le 30 juin 1913, avis d'expropriation fut donné par la Cité de Montréal à l'appelante non-seulement pour les lots de terre qui avaient front sur le boulevard projeté, c'est-à-dire les numéros 3, 5, 6 & 7 du numéro 168: mais aussi des terrains qui se trouvaient en arrière de ces lots-là et qui étaient subdivisés de manière à avoir front sur la rue Drolet.

L'avis d'expropriation pour les lots ayant front sur la rue Drolet était évidemment erroné. Par exemple, en décrivant une partie du No. 168-11, on donnait les tenants et aboutissants et on déclarait entr'autres choses que cette partie du numéro 168-11 que l'on voulait exproprier était bornée au nord-ouest par le numéro du cadastre 168-11. Comment une partie du lot 168-11 pouvait-elle être bornée par tout le lot 168-11?

Il en est de même de la lisière de terrain en premier lieu décrite dans l'avis d'expropriation, que l'on déclare faire partie du cadastre sous le numéro 168-4. Or, si on examine le plan qui est devant nous, il est évident que ce numéro 168-4 que l'on décrivait faisait partie, au contraire, du numéro 168-11.

Il y avait donc dans cet avis d'expropriation erreur évidente et palpable: erreur dans la description des lots et erreur quant à l'acquisition des terrains que la ville désirait faire. Je comprends parfaitement que la ville eût voulu exproprier tous les lots ayant front sur la rue projetée: mais vouloir acquérir des lots qui se trouvaient en arrière de ceux-ci, et qui se trouvaient avoir front sur une autre rue, ne devait pas, suivant moi, entrer dans les intentions de la ville.

La ville dans son avis faisait une offre de $17,500 pour le terrain qu'elle désirait acheter de l'appelante.

L'appelante a répondu qu'elle refusait cette offre et a déclaré que la valeur des propriétés qu'on voulait exproprier était de $98,000. Différence notable, comme on le voit, et qui démontre évidemment qu'il devait y avoir erreur quant aux terrains qu'on entendait de part et d'autre acheter et vendre.

Les arbitres commencèrent leurs procédures pour déterminer la valeur du terrain.

On avait déjà tenu deux ou trois séances, quand, tout-à-coup, il fut découvert que le plan du 27 janvier 1913 ne montrait pas une maison de rapport qui avait été érigée par Maria Bisaillon sur ses lots ayant face sur la rue Drolet, mais qui, par l'expropriation projetée se trouvait être partiellement prise. Alors les procédures furent ajournées *sine die* par les procureurs, vu la déclaration faite par les procureurs de la propriétaire qu'il y avait erreur au plan. En effet, il ne pouvait pas être présumé que la Cité de Montréal, en instituant ces procédures et en demandant à exproprier cent pieds de plus que ce qui était nécessaire pour le Boulevard, eût l'intention de prendre une partie de la maison seulement: et il est á présumer également que la demanderesse appelante ne tenait nullement à voir sa maison éventrée et démolie en partie lorsqu'il était si facile de confiner l'expropriation à une portion moindre de terrain.

Je comprends que s'il se fût agi de l'ouverture de la rue proprement dite, il aurait pu devenir nécessaire de démolir une maison pour partie: mais vu que la ville voulait exproprier non-seulement la partie de terrain nécessaire pour l'assiette de la rue mais aussi des terrains riverains, il n'était pas à présumer que l'on eût l'intention de démolir une grande maison: car autrement la cité aurait été obligée de payer tous les dommages résultant de cette démolition partielle et

1918
BISAILLON
v.
CITY OF
MONTREAL.
Brodeur J.

qui auraient représenté pratiquement la valeur de toute la maison.

Cette erreur ayant été découverte, il me semble que, même si nous acceptons la prétention de l'appelante que ces procédures constituent un contrat liant les deux parties, il y a eu évidemment une erreur qui est une cause de nullité quant à la substance de la chose qui faisait l'objet du contrat. Je ne crois pas, vu la conclusion à laquelle j'en suis venu sur un autre point, qu'il soit nécessaire pour moi de décider si l'avis d'expropriation, suivi de la nomination de son arbitre par la partie expropriée, constitue un contrat. Je serais enclin à croire, au contraire, que cet avis d'expropriation est de la nature d'une instance judiciaire, ainsi que je le démontrerai plus loin.

Les autorités de la ville ont alors considéré la situation et en sont arrivées à la conclusion de préparer un nouveau plan par lequel elles limiteraient leur expropriation à la partie spécialement requise pour l'élargissement de la rue: et elles ont fait signifier à l'appelante, Maria Bisaillon, un avis à cet effet déclarant que la cité se désistait de son premier avis d'expropriation et qu'elle n'exproprierait que le terrain nécessaire pour la rue elle-même.

On prétend maintenant par la présente action que la ville n'avait pas le droit de se désister de ces procédures et qu'ayant produit son plan du 27 janvier 1913 elle était liée et qu'il ne lui était pas permis de produire un autre plan ou de réduire la quantité de terrain qu'elle désirait exproprier.

La cité pouvait-elle se désister?

Je soumets que sans nul doute elle pouvait le faire en vertu des dispositions de notre loi en la matière.

L'expropriation du terrain en question, comme on l'a vu, ne devait pas être faite suivant les dispositions

ordinaires de la charte de la cité, mais suivant l'acte général d'expropriation de la province, qui se trouve aux articles 7581 et suivants des Statuts Refondus de la province de Québec.

Ce serait une erreur de croire que cet acte d'expropriation contient toute la procédure qui doit être suivie en la matière. Nous retrouvons cet acte au chapitre second du titre XII des statuts refondus de la province de Québec qui est intitulé *Des matières en rapport avec le code de procédure civile.* La section 9 de ce chapitre contient les dispositions de la loi d'expropriation proprement dite.

Au cours de l'argument, j'ai suggéré que nos articles 1431 et suivants du Code de Procédure Civile pouvaient s'appliquer à l'expropriation actuelle et à l'expropriation faite en vertu de la loi générale de la province. Mais cette suggestion ne m'a pas paru avoir été acceptée par aucune des parties.

Cependant il me semble qu'il n'y a aucun doute que là où la loi générale des expropriations ne contient pas de clause particulière sur le sujet on doit s'en rapporter au Code de Procédure Civile pour déterminer respectivement les droits et les obligations des parties et la procédure qui doit être suivie. Ainsi, il n'est pas dit, par exemple, dans l'acte des expropriations si une partie peut révoquer ou abandonner la procédure qui a été faite. Alors du moment qu'il n'y a pas de dispositions dans l'acte général nous pouvons donc référer au Code de Procédure: et là nous trouvons l'article 1437 C.P. qui dit que

> pendant les délais du compromis, les arbitres ne peuvent être révoqués que du consentement de toutes les parties. Si le délai est indéfini, il est libre à chacune des parties de révoquer le compromis, lorsqu'il lui plait.

C'est d'ailleurs une règle générale de notre pro-

1918
BISAILLON
v.
CITY OF MONTREAL.
Brodeur J.

cédure que nous trouvons à l'article 275, C.P. qui dit que

> Une partie peut, en tout temps avant jugement, se désister de sa demande ou procédure, à la condition de payer les frais.

Appliquant, par conséquent, les articles 1437 et 275 du Code de Procédure Civile à la cause actuelle, je dis: La cité avait le droit de se désister de son avis d'expropriation parce que d'abord il n'y avait pas de délai fixé pendant lequel les arbitres devaient faire leur rapport: et ensuite parce qu'elle pouvait, en vertu de l'article 275 du code de procédure civile exercer tout droit qu'une partie possède d'abandonner sa procédure, pourvu qu'elle paie les frais.

L'appelante nous a cité certaines décisions qui ont été rendues en Angleterre à l'effet que les corporations municipales ne pouvaient pas se désister d'un avis d'expropriation.

Nous n'avons pas à juger cette cause-ci d'après la loi qui régit les expropriations en Angleterre mais d'après la loi qui régit les expropriations dans la province de Québec. Or, je trouve dans les statuts refondus, ainsi que dans notre code de procédure civile les éléments nécessaires pour déclarer qu'une partie peut se désister de sa procédure en expropriation.

Pour ces raisons, l'appel institué par Maria Bisaillon devrait être renvoyé avec dépens.

MIGNAULT J.—Je partage l'opinion de M. le Juge Brodeur.

Appeal dismissed with costs.

Solicitors for the appellant: *St. Germain, Guerin & Raymond.*

Solicitors for the respondent: *Laurendeau, Archambault, Damphousse, Jarry, Butler & St. Pierre.*