

Supreme Court of Canada

La Corporation de la Paroisse de St. Prosper v. Rodrigue, (1917) 56 S.C.R. 157

Date: 1917-11-13

La Corporation De La Paroisse De St. Prosper (Defendant). Appellant;

and

Louis Rodrigue (Plaintiff) Respondent.

1917: November 6; 1917: November 13.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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

Constitutional law—Municipal by-law—Sunday observance—Prohibiting opening of restaurants—"Lord's Day Act," R.S.C., 1906, c. 153.

A municipal by-law, forbidding the opening of restaurants and the sale therein of any merchandise on Sundays, is *ultra vires*, as it deals with, the observance of Sunday or the Lord's Day. *Ouimet v. Bazin*, 46 Can. S.C.R. 502, followed.

APPEAL from the judgment of the Court of King's Bench, appeal side¹, reversing the judgment of Belleau J. in the Superior Court for the district of Beauce².

The respondent is a restaurant-keeper, doing business in the municipality appellant, and took an action to set aside a by-law passed by the appellant, by which were prohibited the opening of the restaurants on Sunday, and the sale therein of any merchandise. The principal grounds invoked by the respondent were that such by-law was regulating the Sunday observance, which was a matter of federal jurisdiction only, and *ultra vires* of the powers of municipalities. The trial judge dismissed the action, and held that the by-law was only in relation with public peace, good order and good morals, and was within the police

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power of the corporation appellant. But this judgment was reversed and the by-law quashed by the majority of the Court of King's Bench, which found that they had to follow the ruling in *Ouimet v. Bazin*³

The questions in issue on the present appeal are stated in the judgments now reported.

*Louis Morin K.C. for the appellant cited Ouimet v Bazin*³, *Tremblay v Cite de Québec*⁴ and *City of Montreal v. Beauvais*⁵.

*Belcourt K.C. for the respondent, cited also the above cases and Association St. Jean Baptiste de Montreal v. Brault*⁶.

¹ Q.R. 26 K.B. 396.

² Q.R. 51 S.C. 109.

³ 46 Can. S.C.R. 502.

⁴ 46 Can. S.C.R. 502.

⁵ Q.R. 38 S.C. 82.

⁶ 42 Can. S.C.R. 211.

THE CHIEF JUSTICE.—I am of opinion that this appeal should, on the merits, be dismissed with costs for the reasons given by Mr. Justice Anglin; on the question of jurisdiction, I am bound by the judgment of the majority in *Shawinigan Hydro-Electric Company v. Shawinigan Water and Power Company*⁷ The motion should be dismissed without costs, having been heard on the merits.

DAVIES J.—In this case a motion has been made to quash the appeal for want of jurisdiction, but as there was some question raised as to the constitutionality of the provincial law, under which the by-law in question was said to have been passed, the motion was allowed to stand over, and the argument on the merits took place.

I have no doubt that the appeal should be dismissed. The by-law in question is a prohibitive one, and deals with the observance of Sunday or the Lord's Day That is a subject matter which it has been determined

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is within the legislative powers of the Dominion Parliament. That Parliament has already dealt with the subject matter and the Privy Council has decided in favour of the validity of the Act.

In the case of *Ouimet v. Bazin*⁸, at page 504, I stated my view as to the construction of this Federal Act, namely, that while it enacted prohibitive legislation for the whole of Canada, it also delegated to the several Provincial Legislatures the power to declare that any act or thing prohibited by the Dominion Act might be exempted from the operation of the Act, and permitted to be done by Provincial legislation either existing at the time the Federal Act came into force or subsequently enacted.

The question raised in this case was not as to the validity of any such permissive legislation, for none such was invoked, but as to the validity of a by-law forbidding the opening of restaurants and the sale therein of any merchandise on Sundays.

Such a by-law is a direct dealing with Sunday observance, and therefore *ultra vires*. Provincial legislation attempting to authorize it would itself be *ultra vires*.

I concur, therefore, in dismissing the appeal.

⁶ 30 Can. S.C.R. 598.

⁷ 43 Can. S.C.R. 650.

⁸ 46 Can. S.C.R. 502.

LDINGTON J.—This appeal involves only the question of the validity of a by-law of the appellant.

The judgment from which appeal is taken rests upon the view that there is a constitutional question raised within the meaning of section 46, sub-section (a) of the "Supreme Court Act."

Unless there is such a question involved in the appeal, we have no right to hear it for we have no jurisdiction to review the work of the Court of King's

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Bench relative to the validity of municipal by-laws, unless incidentally something else is in controversy between the litigant parties to an appeal.

So far as the constitutional question, if any, involved in this appeal is concerned, the decision in the case of *Ouimet v. Bazin*⁹, as I understand it, is conclusive against the appeal.

In that case I thought, and still think, it was possible to reduce all that was involved therein to the single question of the power to prohibit a theatre from carrying on its business on a Sunday, for which offence the appellant had been condemned.

This court held it was not possible to maintain the distinction between a single item of the numerous prohibitions in the Act there in question giving rise to the issue involved in that case, and the general scope of the Act upon which the prosecution therein was founded.

Be that as it may, I cannot read the several opinions which led to the decision without feeling that it was founded in truth upon the common notion of a peculiar sanctity found in the religious obligations to observe the day as one devoted to religious observances, which leads to viewing its desecration with such abhorrence as to constitute that something criminal in its nature and hence legislation relative thereto as criminal legislation.

If we analyze the history of legislation, designed to secure the observance of what is commonly called the Lord's Day and the judicial decisions thereupon; which ostensibly

⁹ 46 Can. S.C.R."502.

founded the opinions I refer to as leading to the decision in *Ouimet v. Bazin*⁹, it is hard to escape the conclusion that it is impossible, in face of

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the general conception I have tried to express, to frame the most moderate attempt at legislation relative to what men may be prohibited from doing on that day without being met by the objection that it is of the class falling within what has been thus judicially declared criminal legislation.

If we could imagine the Legislature of Quebec taking up each item at a time of what was prohibited in the Act in question in said case, and thus by half a dozen or more Acts covering the same ground as that Act, could such Acts, or any of them, now be upheld in face of such a decision? I think not. In my own judgment in that case I tried an analogous experiment. My attempt was fruitless. I must now observe the law as laid down therein.

It seems idle now to say that in the case of *The City of Montreal v. Beauvais*¹⁰, we upheld similar legislation relative to prohibiting certain work or business on weekdays within specified hours. No one questions that power when duly exercised as to weekdays.

There is no reason for denying it in relation to Sunday, except the distinction judicially made between that and other days.

Hence, so far as the judgment appealed from rests upon *Ouimet v. Bazin*¹¹ it seems well founded, and leaves no escape from dismissing the appeal.

If, as suggested in course of the argument, the by-law is not within the scope of the Municipal Act, no harm has been done.

But upon that I express no opinion. We have no jurisdiction to deal with it from that point of view.

In any way I can look at the appeal it should be dismissed with costs.

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⁹ 46 Can. S.C.R. 502.

¹⁰ 42 Can. S.C.R. 211.

¹¹ 46 Can. S.C.R. 502.

The motion to quash failed, because effect could not properly be given to it without hearing the appeal, and hence should be dismissed, but I think without costs under the very peculiar circumstances which seemed to invite it lest the court might complain of its not having been made.

DUFF J.—I am of the opinion that this appeal should be dismissed with costs.

ANGLIN J.—The appellant, a municipal corporation, seeks the reversal of the judgment of the Court of King's Bench of the Province of Quebec, which quashed one of its by-laws, whereby the opening of restaurants and the sale therein of any merchandise on Sundays is forbidden, on the ground that this by-law deals with Sunday observance, and is, therefore, beyond the jurisdiction of a municipal council.

If the purpose and purview of the by-law are what they have been held to be (as I think correctly) by the Court of King's Bench, its invalidity as an invasion of the domain of criminal law, assigned exclusively to the Dominion Parliament, is not open to question in this court. *Ouimet v. Bazin*¹². No provision of the Quebec statutes warranting the enactment of any such by-law has been referred to, and it is in conflict with the spirit, if not with the letter, of s. 4466 of the R.S.Q. 1909.

On the other hand, if this be not the true character and object of the by-law—if it be merely a local police regulation passed for the maintenance of peace, order and good government in the Parish of St. Prosper—nobody would dream of questioning the validity of the provisions of the Quebec Municipal Code empowering

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the municipality to enact it. The proper construction of the impugned by-law does not "involve the question of the validity of an Act of the Parliament of Canada or of the Legislature," "Supreme Court Act," s. 46 (a). On no other ground can the appeal be brought within any of the several clauses, (a), (b) or (c) of s. 46 of the "Supreme Court Act," and, as held in the *Bell Telephone Co. v. City of Québec*¹³, accepted as binding by the majority of this Court in the recent case of *Shawinigan Hydro Elec. Co. v. Shawinigan Water & Power Co.*¹⁴, the judgment in an action brought to set aside a municipal by-law is not appealable to this Court under the special provision of s. 39 (e), which is excepted by

¹² 46 Can. S.C.R. 502.

¹³ 20 Can. S.C.R. 230.

¹⁴ 43 Can. S.C.R. 650.

s. 47 from the operation of s. 46. In other words, the right of appeal in such an action must depend upon the general jurisdiction of the court conferred by s. 36, which is subject, in appeals from the Province of Quebec, to the limitation imposed by s. 46. It therefore does not exist where the case does not fall within one or other of the negatively permissive clauses of the latter section.

Either the impeached by-law is an enactment dealing with Sunday observance and, as such, has rightly been held *ultra vires*—and there is no suggestion that any provincial legislation purports to sanction it if that be its character—or it is merely a local police regulation, and, as such, its enactment would be warranted by provincial legislation of unquestioned validity. In neither aspect of the case is it within s. 46 (a) of the "Supreme Court Act" and we are, in my opinion, without jurisdiction to entertain the appeal.

I understand, however, that the majority of the court is of the opinion that the appeal; should be

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dismissed on the merits. If the court has jurisdiction; I would concur in that result.

Although the respondent moved to quash, he did so only after the costs of printing had been incurred, and a few days before the appeal was due for hearing upon the merits. Moreover, he failed to make it apparent, upon the presentation of his motion, that the appeal did not involve a question of the validity of an Act of the Provincial Legislature, and, without disposing of the motion, the court accordingly directed that the appeal should be heard on the merits. Under these circumstances, while now satisfied that the motion to quash should succeed, I do not dissent from the order refusing costs of it.

Appeal dismissed with costs.

Solicitors for the appellant: Pacaud & Morin.

Solicitors for the respondent: Bouffard & Godbout.