

Supreme Court of Canada
Berger v. Clavel, (1917) 55 S.C.R. 633
Date: 1917-12-31

Berger v. Clavel.

1917:

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

ON APPEAL FROM THE SUPERIOR COURT OF THE PROVINCE OF QUEBEC, SITTING IN REVIEW AT MONTREAL.

Will—Ambiguous clause—Interpretation—Extrinsic evidence.

APPEAL from a decision of the Court of Review at Montreal¹, affirming the judgment of Martineau J. at the trial, and maintaining the action with costs.

This was an action to define the rights of one Germain, plaintiff, under the testament of the late Charles Berger. The will was drawn in French, and the bequest in question was of an immovable property described in the following words:—

Mon immeuble portant les numeros civiques 1178 à 1186 inclusive ment de la rue St. Denis, coin Mont Royal, avec dependances.

It appears that, on that property on Mont Royal avenue, there were two stores in course of erection at the time when the will was made. The plaintiff contends that the bequest is of all the testator's property at the place mentioned, and the defendant, respondent, submitted that the portion of the property dealt with is limited to those houses which at the time the will was made bore the civic numbers therein mentioned. Both the courts below held that, in view of the doubt which exists as to what constitutes the subject matter of the legacy, extrinsic evidence was admissible to prove what the intention of the testator was, as imperfectly expressed by the notary who drew the will.

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On appeal to the Supreme Court of Canada, after hearing counsel on behalf of both parties, the court reserved judgment and, on a subsequent day, allowed the appeal with costs, Sir Charles Fitzpatrick C.J. and Anglin J. dissenting; Davies J., though thinking there was sufficient ambiguity in the language of the devise to admit extrinsic evidence, was of the opinion that this appeal should be allowed on the questions of fact.

Appeal allowed with costs.

Lafleur-K.C. and St. Germain K.C. for the appellant.

Atwater K.C. and J. A. Bernard for the respondent.

¹ Q.R. 51 S.C. 165, sub nom. Germain v. Clavel.