

1914

*June 11.
*June 22.

J. O. HONORIUS RICARD (PLAIN- }
TIFF) } APPELLANT;

AND

LA VILLE DE GRAND'MÈRE (DE- }
FENDANT) } RESPONDENT.

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

*Contract—Municipal corporation—Exclusive franchise—Renewal at
expiration of term—Right of preference—By-law—Approval by
ratepayers.*

The municipal corporation granted exclusive franchises to R. for supplying electric light, etc., to the inhabitants of the municipality for the term of ten years, with a proviso giving R. a preference over any other person tendering for such services, at the end of that term, at the rates mentioned in the competing tender, for an additional term of ten years. On the termination of the ten years mentioned in the contract, in pursuance of powers obtained from the legislature permitting the municipal corporation to supply electric light, etc., to the inhabitants, the corporation passed a by-law whereby it undertook to perform these services and refused to renew the contract for the additional term. In an action by R. to have the by-law set aside, a declaration that he was entitled to the renewal of his contract for the additional term, and for an injunction restraining the corporation from acting upon the by-law;

Held, affirming the judgment appealed from (Q.R. 23 K.B. 97), that there was no obligation arising under the contract which prevented the corporation from exercising the new powers vested in it for the advantage of the inhabitants and that, in consequence of the exercise of those powers, R. had no contractual right to a renewal for the additional term.

As the by-law in question had been ratified by the provincial statute 3 Geo. V., ch. 67, during the time the suit was pending, the cross-appeal by the corporation was allowed and the by-law and

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

a resolution of the municipal council based thereon were declared valid.

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APPEAL from the judgment of the Court of King's Bench, appeal side(1), varying the judgment of Tourigny J., in the Superior Court, District of Three Rivers, by which the plaintiff's action was dismissed with costs.

In regard to the issues raised upon the present appeal the circumstances of the case are sufficiently stated in the head-note.

P. N. Martel K.C. and *Aimé Geoffrion K.C.* for the appellant.

Laflaur K.C. and *Rinfret K.C.* for the respondent.

THE CHIEF JUSTICE.—This action was wrongly conceived.

If at the expiration of the first ten-year period the contract was at an end, as was obviously the case, the action of the municipality in refusing to give effect to the "pacte de préférence" might give rise, in a proper case, to a claim for damages, but certainly does not give the plaintiff a right to the relief asked for in this proceeding.

The impugned by-laws have been ratified and confirmed by the legislature and, except in so far as they affected the plaintiff in his contractual relations with the municipality, they are declared to be valid to all intents and purposes. It is quite true that the appellant alleges an interest as a ratepayer, but he can no longer, in view of the validating Act, invoke an interest as such in these proceedings.

(1) Q.R. 23 .KB. 97.

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The Chief
 Justice.

I would dismiss the appeal with costs here and below.

Dealing now with the cross-appeal, I am of opinion that the judgment appealed from should be modified and that the resolution of the twenty-eighth day of August, 1912, should be declared good and valid, the whole without costs.

INDINGTON J.—The appellant, in January, 1902, obtained from the respondent municipality an exclusive privilege of furnishing electricity in said municipality. The first two clauses of the contract were as follows:—

1. La Corporation de la Ville de Grand'Mère accorde à J. O. H. Ricard, écrivain, médecin, de la Ville de Grand'Mère, le privilège exclusif, pendant dix ans, de fournir l'électricité pour les fins d'éclairage, chauffage, pouvoir moteur, électrolyse, travail des métaux, locomotion, et généralement toutes les fins auxquelles peut ou pourra se prêter l'électricité.

2. Le dit privilège sera exclusif pour dix ans avec préférence sur tout autre concurrent, au bout des dix ans, au prix du dit concurrent pour dix autres années.

The questions raised by this appeal turn upon the meaning to be given the second of said clauses.

The first ten years of the privilege were duly enjoyed by the appellant.

The municipality was enabled, during said term of ten years, by the legislature, to enter upon the business of electric lighting. It had always been enabled by law to do its own lighting but was, perhaps, not at liberty or enabled to supply lighting to the public generally.

The municipal council decided, at the expiration of said ten years, to exercise both its old and its new powers and, in executing such purpose, passed by-laws which were attacked by the appellant.

It is not necessary to dwell upon the details of what was done, for the legislature confirmed these by-laws with a provision in the Act of confirmation that, if the appellant was in law entitled to insist upon the extension of his privilege and contract, as he claimed to be under said second clause of the contract, then the respondent was thereby bound to expropriate his electric light property.

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It is to determine whether or not such right to extension exists that this appeal was brought.

I am unable to find in said second clause anything in the way of a binding contract of such nature as claimed.

Indeed, the entire contract was, as framed, *ultra vires* the powers of the respondent.

The respondent cannot be said ever to have bound itself to refrain from exercising its own undoubted powers at the expiration of ten years. It seems only to have said that if it followed the policy of letting the contract for town-lighting to others at the end of ten years to give the appellant a preference.

It has not let any contract to others and, hence, there is no semblance of ground upon which the proposed preference can become operative.

The appeal must, therefore, be dismissed with costs.

There is a cross-appeal which, admittedly, involves nothing but costs, save what relates to a resolution of the council passed in execution of the purposes of the confirmed by-law. I see no objection to the modification of the judgment so as to affirm the validity of such resolution, but it should be without costs and

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also without giving respondent any relief as to the costs involved in what is sought in the cross-appeal.

The costs involved in the appeal relative to the neat point first above referred to are all the costs in these proceedings which ought to be borne by appellant.

DUFF J.—I think the appeal fails. There is neither express nor implied obligation resting on the respondent corporation not to exercise the powers now vested in it for the advantage of the inhabitants according to the best judgment of the council. And these powers having been exercised in such a way that the contract with the appellant is inapplicable, the appellant has no ground of complaint capable of vindication in a court of law.

ANGLIN J.—I think it is abundantly clear that the appellant had not a contractual right to the renewal of his lighting contract with the respondent municipality. He may have some reason to complain of the treatment he has received, but I find nothing in the record which supports his claim that he was entitled to a renewal of his contract.

I would dismiss the appeal with costs.

BRODEUR J.—Je suis d'opinion de renvoyer l'appel principal avec dépens pour les raisons données par le juge en chef. Sur le contre-appel, je vois que la législature ayant ratifié les règlements en question, la résolution du 28 août, 1912, qui a été adoptée en exécution de l'un de ces règlements, est également ratifiée, le jugement de la cour d'appel qui casse cette

résolution doit être modifié de la manière à déclarer cette résolution bonne et valable. Il ne devrait pas y avoir de frais sur le contre-appel.

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*Appeal dismissed with costs;
cross-appeal allowed in part
without costs.*

Brodeur J.
—

Solicitor for the appellant: *P. N. Martel.*

Solicitors for the respondent: *Perron, Taschereau,
Rinfret & Genest.*