

THE QUEBEC RAILWAY, LIGHT
 AND POWER COMPANY (PETI-
 TIONERS) } APPELLANTS;

1908
 *Oct. 29.
 *Nov. 10.

AND

THE RECORDER'S COURT OF
 THE CITY OF QUEBEC AND
 THE CITY OF QUEBEC (RE-
 SPONDENTS) } RESPONDENTS.

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

*Operation of tramway—Powers of municipal corporation—Legisla-
 tive authority—Use of streets—By-law—Conditions imposed—
 Penalty for breach of conditions—Repeal of by-law—Contract-
 ual obligation—Offence against by-law—Jurisdiction of Record-
 er's Court—Prohibition.*

The city enacted a by-law granting the company permission to use its streets for the construction and operation of a tramway and, in conformity with the provisions and conditions of the by-law, the city and the company executed a deed of agreement respecting the same. A provision of the by-law was that "the cars shall follow each other at intervals of not more than five minutes, except from eight o'clock at night to midnight, during which space of time they shall follow each other at intervals of not more than ten minutes. The council may, by resolution, alter the time fixed for the circulation of the cars in the different sections." For neglect or contravention of any condition or obligation imposed by the by-law, a penalty of \$40 was imposed to be paid by the company for each day on which such default occurred, recoverable before the Recorder's Court, "like other fines and penalties." An amendment to the by-law, by a subsequent by-law, provided that "the *present disposition* shall be applicable only in such portion of the city where such increased circulation is required by the demands of the public."

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Maclellan JJ.

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Held, that default to conform to the conditions and obligations so imposed on the company was an offence against the provisions of the by-law, and that, under the statute, 29 & 30 Vict. ch. 57, sec. 50 (Can.), the exclusive jurisdiction to hear and decide in the matter of such offence was in the Recorder's Court of the city of Quebec.

Judgment appealed from (Q.R. 17 K.B. 256), affirmed.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of McCorkill J.(2), in the Superior Court, quashing a writ of prohibition, issued on the petition of the appellants, with costs.

On complaint, by the City of Quebec, that the company had illegally neglected to operate their tramcars at certain stated intervals necessary for the convenience of the general public, upon certain streets in the city, in violation of the city by-laws then in force, the company was summoned before the Recorder's Court for the City of Quebec and, upon conviction of the offence as charged against the by-laws, it was condemned to pay the penalty of \$40 provided under the by-laws in question. The company, in pleading to the complaint, denied the jurisdiction of the Recorder's Court to hear and determine the matter in issue on the ground that the obligation, if any, of the company to operate and circulate its cars at certain fixed intervals was contractual and the breach of any such obligation was not a matter which came within the jurisdiction of that tribunal, but was within the exclusive jurisdiction of the Superior Court. Upon conviction, the company sued out a writ of prohibition, alleging that the Recorder's Court had no jurisdiction to entertain any suit or proceeding in respect

(1) Q.R. 17 K.B. 256.

(2) Q.R. 32 S.C. 489.

of the penalty claimed; that the penalty sought to be recovered was for the alleged breach of a contract resulting from the by-laws and a deed of agreement entered into between the city and the company, based on the by-laws; that, for any such breach, the company was not liable to a penalty but for damages only in a suit properly instituted in a court of competent jurisdiction; that the frequency of the service required had not been legally determined prior to the complaint; that the by-laws in question did not impose any penalty in respect of the matters complained of; that the city had no authority to enact by-laws imposing penalties for the breach set out in the complaint or to give the Recorder's Court authority to entertain such a complaint, and that the by-laws in question were inconsistent, void, vague and ineffectual for want of certainty.

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At the trial, the writ of prohibition was quashed with costs, and this decision was affirmed by the judgment appealed from, Bossé and Cimon JJ. dissenting.

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

G. G. Stuart K.C. for the appellants.

C. E. Dorion K.C. and *Corriveau K.C.* for the respondents.

THE CHIEF JUSTICE.—I concur in the view of this case taken by Sir Louis Davies. The appeal is dismissed with costs.

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GIROUARD J.— I am of opinion that this appeal should be dismissed for the reasons stated by Mr. Justice Davies.

DAVIES J.—The two questions arising in this case are, first, as to the extent of the jurisdiction given to the Recorder's Court by the legislature, and next, as to the nature of the breach by the appellants of the obligation imposed upon them by the by-law of the city permitting, on specified conditions, the use by the appellant company of the streets of the city for the construction and operation of a street railway.

It had been made by a statute a necessary pre-requisite to the granting of such permission that the city council should first determine by resolution *all the conditions* on which it should be given, and that, when the city and the company agreed upon these conditions they should be embodied in a by-law of the council to come into force only after the passing of a notarial contract between the parties based on and in conformity with the by-law.

Such a by-law was passed by the city council of Quebec granting the necessary permission to use the streets of that city to the appellant company subject to the conditions and obligations therein stated, and a notarial contract was duly passed between the city and the company in conformity with those provisions and conditions.

One of the provisions of this by-law, art. 37, stipulates as follows:

The cars shall follow each other at intervals of not more than five minutes, except from eight o'clock at night to midnight, during which space of time they shall follow each other at intervals of not more than ten minutes. The council may, by resolution, alter the time fixed for the circulation of the cars in the different sections.

Amendment, 23rd November, 1900, by-law No. 370 :

The present disposition shall be applicable only in such portion of the city where such increased circulation is required by the demands of the public.

It was strongly pressed upon us that this amendment practically repealed the whole original article and required a new by-law to be passed specifying the parts of the streets where "such increased circulation is required."

I have, after some difficulty, owing to the vague language used, accepted the construction placed upon the amendment by the courts below, namely, that it applied only to the last sentence of art. 37, and was not intended to change and did not change the first part which was called, in the amendment, the "present disposition," but meant that the council, if and when it altered such disposition, should only apply that existing or "present disposition" to such portion of the city as the increased circulation should shew required its application or retention. No alteration under the amendment was ever made.

As to the recorder's jurisdiction, the language of the statute, 29 & 30 Vict. ch. 57, sec. 50 (Can.), gives him "exclusive jurisdiction" to hear and decide in the matter of any offence committed against the provisions of the city charter or its amendment

or the by-laws now in force or which shall hereafter be in force in the said city.

The question arises *in limine*: Was the neglect to comply with the by-law requiring the cars to be run within stated times an *offence* against its provisions? I think it was. It was a neglect to comply with a positive requirement of the by-law which became an obligation of the company when the by-law came in

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force on the passing of the notarial contract between the city and the company. Art. 60 of the by-law says:

If the company neglects to conform to or contravenes any of the conditions or obligations imposed upon it by the present by-law, it shall thereby incur and be liable to a penalty not to exceed \$40 for each and every day that it fails to conform to or that it contravenes any of the said conditions or obligations, and the said penalty shall be recoverable before the Recorder's Court of this city like other fines and penalties.

I am unable to see why a failure to comply with a specific obligation imposed by this by-law upon the company to run its cars at prescribed times is not an offence against the by-law and is not recoverable in the court specially designated by the legislature as the one having exclusive jurisdiction over offences against the city by-laws. Mr. Stuart's argument was that this was merely a breach of a contractual obligation arising out of the contract which the legislature enacted should be entered into by the company accepting the by-law and agreeing to build and operate the street railway pursuant to it. But it seems to me that the test must be found in the answer to the question, whether the breach complained of is of an obligation which it was within the power of the city council to impose upon the company, either by virtue of the general powers of government conferred upon the city or of the specified powers given to it to make a by-law which should be the basis of any contract entered into for the operation of a street railway on its streets. If the by-law comes within that test, and has a prescribed penalty for breach, as in the case before us, then the jurisdiction of the Recorder's Court is broad enough to embrace it.

The courts below seem to base their judgments

upon the general powers given by the legislature to the city to make by-laws

for the good order, peace, security, comfort, improvement, cleanliness, internal economy and local government of the said city.

No language could well be broader than this, but, in addition, and, I assume *ex abundanti cautelâ*, the legislature gave special powers also to make by-laws on enumerated subjects. The judgment of the court of first instance and that appealed from both proceeded upon the ground that the regulation for violation of which the action was brought was within the police powers of the city, and so was not *ultra vires*.

Without determining whether or not this is a proper ground upon which to base judgment, I prefer to rest mine upon the ground that, altogether outside of the powers conferred on the city by its charter, the legislature has, by 57 Vict. ch. 58, expressly conferred upon it special powers to grant conditional permission to street railway companies to make use of the streets for the purpose of laying their rails and, in section 20, enacted as follows:

The city council shall first determine, by resolution, all the conditions on which it intends to grant such permission; and when the city, and the said company shall agree upon all the said conditions, a by-law shall be made and passed by the said city council, comprising all the said conditions of the said permission, *the said by-law to come into force only after the passing of a notarial contract between the parties based on the said by-law, and in conformity therewith.*

Pursuant to these powers the by-law in question, containing the article 37, above quoted, was passed and accepted and agreed to by the appellant company and a notarial contract passed between the city and the company as provided by section 20. Here we have

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all the pre-requisites necessary to give the Recorder's Court jurisdiction to hear any complaint as to the violation by the company of article 37 of the by-law.

Whether, in addition to this penalty, a civil suit might be brought for special damages incurred by the city as a result of a violation of the contractual obligation of the company as embodied in the notarial contract was not before us in any way, and I say nothing about it.

It is enough for me to say that, in my judgment, the Recorder's Court had jurisdiction to try the offence complained of and impose the penalty prescribed.

The appeal should be dismissed with costs.

IDINGTON J.—The only question raised, which is that of the jurisdiction of the recorder of Quebec, seems answered by the clear and comprehensive language of the statute conferring upon him jurisdiction to hear and determine the matter of any offence against the by-laws of the city; and of the statute enabling the city to pass such by-laws as deemed meet on almost any subject the city government required and, then, by the statute specially enabling it to provide for the running properly of an electric car service.

It would not seem necessary, once the general penal power that appears in the statute is given to add to each of such by-laws as the city might pass the sanction of a penalty, or to provide, in each new enactment rendering it necessary or empowering the city to pass by-laws relative to some new subject matter brought within the range of the matters the city council may have to deal with, an express power

to add such sanction to such by-laws relating to the new subject matter.

It is not an unheard of thing to attempt, by means of sanctions such as these, to secure the performance of duties to be discharged by corporations created to furnish a service, it may be of light or of water or even of running cars.

All these franchises are contractual or quasi-contractual in character, and I fail to see why we should draw a line which the legislature has not.

The only serious question here is whether or not the amendment of the by-law really repealed the section proceeded upon.

It certainly does not seem to have been the intention to do so, and I do not think we can impute to the curious language used such an effect. That being the case, I am happy to find it unnecessary to determine further what this amendment does mean.

I think the appeal must be dismissed with costs.

MACLENNAN J.—I agree in the opinion stated by Mr. Justice Davies.

Appeal dismissed with costs.

Solicitors for the appellants: *Pentland, Stuart & Brodie.*

Solicitor for the respondents: *Philéas Corriveau.*

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