KING'S ASBESTOS MINES (PLAINTIFFS) ..... } APPELLANTS; 1909

*March 10.
*April 5.

AND

THE MUNICIPALITY OF SOUTH THETFORD (DEFENDANT) ..... } RESPONDENT.

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

Municipal corporation—Reservation for highway—Opening first front road — Appropriation — Indemnity — Award — Procès-verbal— Description of lands and owners—Formal defects—Quebec Municipal Code, arts. 16, 903, 906, 914, 918.

In proceedings for the opening of first front roads for which reservations have been made in the grants of land by the Crown, the provisions of the Quebec Municipal Code requiring a description of the lands appropriated for the highway and the owners thereof are imperative and not merely matters of form which may be cured by the provisions of article 16 of that Code, and failure to comply with these requirements nullifies the proceedings.

Judgment appealed from (Q.R. 17 K.B. 566) reversed, Davies and Idington JJ. dissenting.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of the Superior Court, District of Arthabaska, which dismissed the plaintiff's action with costs.

The appellants are the owners of lands in the Township of South Thetford which were granted by the Crown with a reservation of such portion thereof as might be required for public highways. The muni-

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

(1) Q.R. 17 K.B. 566.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

cipal corporation took proceedings for the opening of the first front road across the lands in question, caused a *procès-verbal* to be made locating the highway, took possession and proceeded to cut down trees growing thereon and to construct the road. The municipal valuators reported that, as this was a first front road, there should be no indemnity allowed upon its appropriation and there was no special description of the strip of land taken nor any mention of the names of the owners in the *procès-verbal* or award. The appellants, thereupon, brought an action for trespass, to recover possession of the land so taken and for damages. At the trial, Malouin J. dismissed the action and his judgment was affirmed by the judgment now appealed from.

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

Methot K.C. and *J. A. Ritchie* for the respondent.

THE CHIEF JUSTICE.—This is a possessory action to which defendant pleads counter-possession by virtue of proceedings taken to expropriate the strip of land in dispute for a public highway. Plaintiffs' title and possession are admitted as alleged and the only question at issue between the parties is with respect to the validity of the expropriation proceedings. The Superior Court dismissed the action, holding that the defendant was in lawful possession and on appeal that judgment was confirmed, two judges dissenting, but all the judges there admit that there were irregularities in the expropriation proceedings, which the majority, however, say were covered by the provisions of article 16 of the Quebec Municipal Code. With this conclusion I cannot agree.

The legislature delegates to rural municipal councils a very wide discretion with respect to the construction and maintenance of works of local improvement on the very proper assumption that their members have adequate knowledge of the wants and wishes of their respective communities, and, realizing that these municipal institutions must be worked out by men little versed in the science of legislation and ignorant of the forms of legal procedure, it provides that their proceedings, if attacked in the courts, are not to be too critically examined and that irregularities, where no substantial injustice is done, or the absence of formalities which are not essential to their validity, are not to be considered as grounds of nullity. I unhesitatingly declare that in my opinion it is the duty of the superior courts in the exercise of that controlling, superintending and reforming power conferred upon them by section 2329 of the Revised Statutes of Quebec to give effect in this respect to the intention of the legislature and not to embarrass or obstruct, but to co-operate with these local administrative bodies in the performance of their duties. See *Parish of Ste. Louise* v. *Chouinard*(1); Meredith C.J. in *Parent* v. *Paroisse de St. Sauveur*(2), at page 261; *Kruse* v. *Johnson*(3), and *Slattery* v. *Naylor*(4). If we were called upon to consider the propriety of opening the road, the apportionment of the work to be done upon it or in any way interfere with what may be properly considered the discretionary power vested in the local authority I would admit that with their better knowledge of local conditions these representatives of the people can be trusted to honestly perform their

(1) Q.R. 5 Q.B. 362.
(2) 2 Q.L.R. 258.
(3) (1898) 2 Q.B. 91.
(4) 13 App. Cas. 446.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

The Chief Justice.

duty in accordance with their local requirements and under the controlling influence of local public opinion.

In this case, however, we have to deal not with a question involving the exercise of a discretionary power, nor are we called upon to say whether, in the circumstances, the proposed action was reasonable or unreasonable. The question for us to decide is: Assuming the exercise of a wise discretion and of a "sweet reasonableness," have any of the formalities which are essential to the validity of the title under which defendants have taken possession of the plaintiffs' property been omitted?

The Quebec Municipal Code provides for the expropriation of lands of private individuals when necessary for the purpose of opening highways the soil in which when open is vested in the municipality; (arts. 752 and 903, C.M.). Expropriation has been defined

un acte qui enlève à un particulier sa propriété pour la transférer à la partie expropriante (l'Etat, communes, etc.). Planiol, vol. 1, No. 1084.

No principle is better settled than that the power to expropriate must be strictly pursued and exercised subject to the checks and safeguards provided by the Act which authorizes the proceedings; *Saunby* v. *London Water Commissioners*(1); or, as it is put in the French law, "En matière d'expropriation, tout est de rigueur." The Municipal Code requires that upon a petition of the ratepayers asking for the opening of a new road the council must appoint a special superintendent whose duty it is, if, after consulting the interested parties (art. 796, M.C.), he is of opinion that the road should be opened, to make a *procès-verbal* in which he must give certain details set

(1) [1906] A.C. 110, at p. 115.

out in art. 799. It will be observed that no reference to the land to be expropriated is required in the *procès-verbal.* This *procès-verbal* must be deposited with the council and if homologated (art. 808, M.C.) comes into force after certain delays and notices (art. 809, M.C.). After the *procès-verbal* is made and homologated then the land required must be expropriated (arts. 902 and 903, M.C.), and for this purpose the municipal valuators (art. 908, M.C.) visit the locality and make their award which is the *title* by which the corporation becomes the proprietor (art. 903, M.C.) and is entitled to immediate possession.

This award by virtue of which the respondent has dispossessed the appellants does not authorize it merely to enter upon the appellants' property for the purpose of making a road, but it is a translatory title which divests appellants of the soil in the road and conveys it to the municipality with the right immediately to enter into possession, and it is the validity of this award that is in dispute in this appeal—the objections to the *procès-verbal* and notices having been withdrawn at the argument here. Article 918 of the Municipal Code requires that the award which is a condition precedent to the right of the municipality to take possession of the property should contain, in a general way, the same information as any other translatory title. It should give the names of the parties whose land is taken and the description of the property and the price (indemnity) should be fixed, if any is granted, and if not the refusal must be stated. Mr. Justice Würtèle, in *Barrette* v. *Paroisse de St. Barthélemy*(1), expresses the opinion that the provisions of art. 2168, C.C., are applicable to such a docu-

(1) Q.R. 4 Q.B. 92, at p. 100.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

The Chief Justice.

ment and that the property should be described by cadastral number or by metes and bounds; followed by *Pomeroy* v. *Village of Rock Island*(1), at page 343, and in *O'Neil* v. *City of St. Henry*(2). In the award upon which respondents rely there is no mention or description of the lots of which the land taken forms a part and there is no indication of the proprietor of such land and the only reference to indemnity is contained in these words; after dealing with the indemnity due the proprietors of lot 20, the valuators say:

> Quant au reste du dit chemin, nous n'accordons aucune indemnité, vu que ce chemin est le premier chemin de front du dit rang.

It would seem elementary and reasonable that, before a municipality can expropriate a land owner, "they must first set out and ascertain what part of his lands they require," *Saunby* v. *London Water Commissioners*(3); and it would seem equally important for the party expropriating to know what is being acquired and, for the reasons given by Mr. Justice Anglin, in all of which I concur, the names of the owners of the lots should also be given. I cannot approve of the ingenious suggestion that as these proceedings were taken to expropriate the first front road upon the lots in question, no award was necessary because the Municipal Code forbids the valuators to grant an indemnity in such cases (art. 906, M.C.). A long array of judicial decisions in the Province of Quebec, approved of in this court, has, in my opinion, settled this question finally, in so far as cases arising in that province are concerned. It was considered, in

(1) 4 Rév. de Jur. 333. (2) 4 Rév. de Jur. 139.
(3) [1906] A.C. 110, at p. 115.

1866, in *Deal* v. *Corporation of Philipsburg*(1), and in 1873, in the case of *Doyon* v. *Paroisse de St. Joseph*(2), where it is said, at page 195:

Il a été clairement déclaré que les formalités imposées par le statut doivent être suivies rigoureusement, et que lorsque la loi prescrit qu'une chose sera faite d'une certaine manière, il est non-seulement de l'intérêt et de l'avantage de tout le monde de se conformer à ses prescriptions; mais tout ce qui sera fait en violation de ces prescriptions sera considéré comme une nullité.

In 1876, in *Township of Nelson* v. *Lemieux*(3), the same court held again that the formalities prescribed by the statute for the opening of a road and for the expropriation of property of individuals must be rigourously followed and that on pain of nullity.

In 1884, in *Dorchester* v. *Collett*(4), Mr. Justice Tessier, speaking for the majority of the court says, at page 64:

L'examen préalable des évaluateurs, au cas de *refus* d'une indemnité, est donc nécessaire. C'est un principe de droit constitutionnel et de droit civil que l'on ne peut exproprier personne sans indemnité préalable. C.C. article 407.

And in *King* v. *Township d'Irlande*(5), in 1893, Mr. Justice Bossè, speaking for the court, at page 272, gives as the *ratio decidendi:*

Elle est fondée *exclusivement* sur le fait que la sentence arbitrale était nécessaire pour déterminer s'il devait y avoir *indemnité ou non,* et quel devait être le montant de cette indemnité.

Finally, in 1894, in *Chamberland* v. *Fortier*(6), at page 380, speaking for this court, Mr. Justice Fournier after reviewing these cases says:

Les formalités prescrites par nos statuts pour l'ouverture des chemins et l'expropriation des particuliers pour la construction de chemins

(1) 2 L.C.L.J. 40.
(2) 17 L.C. Jur. 193.
(3) 2 Q.L.R. 225.
(4) 10 Q.L.R. 63.
(5) Q.R. 2 Q.B. 266.
(6) 23 Can. S.C.R. 371.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

The Chief Justice.

doivent être rigoureusement observées sous peine de nullité, comme l'ont décidé nos cours.

It has been argued that the *procès-verbal* and the notices should be searched for the information omitted from the award. Even if we admit this, I cannot find in the *procès-verbal* or the notices a description of the property or a proper designation of the proprietors and, of course, there is no mention of the value, but I am of opinion that the valuators' award which is the title under which the municipality claims the right to dispossess the plaintiff should be complete in itself. The Municipal Code says that the award of the valuators vests the property in the corporation (art. 903) and entitles it to take possession, but it also says what the award must contain and all the conditions enumerated in art. 918 are essential to the validity of an award. When a statute confers a right, privilege or immunity, the regulations, forms or conditions are imperative, in this sense that non-observance of any of them is fatal. Maxwell on Statutes (ed. 1905), p. 557.

I would allow the appeal and reverse the judgment of the Superior Court and of the court of appeal, with judgment as follows; and this court rendering the judgment which should have been rendered by the Superior Court doth hereby declare the plaintiffs lawful possessors of the immovables described in their declaration; and the said defendant is prohibited from troubling them in their possession thereof, in which possession it is ordered that the said plaintiffs be reinstated and maintained, and for their trespass aforesaid the said defendant is condemned to pay the said plaintiffs the sum of $25 damages with interest from this day and costs of a possessory action in the Superior Court and also the costs in the Court of King's Bench and in this court.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Davies J.

DAVIES J. (dissenting).—In this case I have reached the conclusion that the appeal should be dismissed with costs. The grounds of my decision are that the road in question the right to possession of which was in dispute was what is known as a "first front road" subject at any time under the Municipal Code of Quebec to be "appropriated" by the municipality without any compensation except for improvements made or placed thereon. I think Mr. Ritchie, for the respondent, put it very well when he said that these "first front roads" were not like the rest of the lands in the township, but were in the nature of reservations out of the grant. It is true that they are not expressly reserved out of the grant, but they stand under the law in very much the same position as lands which are expressly reserved for roads. Section 906 of the Municipal Code provides for both such cases. It reads:

> No indemnity must be allowed for the land required for the first front road upon a lot, nor for the land reserved for a public road in the grant or concession of a lot.

In the case before us as soon as Mr. Stewart's contention that the minerals to be found on the road bed and the trees growing thereon were to be valued as improvements had been rejected as they were on the argument at bar the appeal stood baldly as a contest with respect to the possession of the land taken as and for a "first front road" on which there were no improvements and as to which the law expressly prohibited any indemnity from being given when appropriated by the municipality.

I was inclined to the opinion that in such a case no valuation at all was required to be gone through. I should have thought that all the sections requiring

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Davies J.

valuation to be made before the right to possession of the road passed to the municipality were inapplicable to a case where valuation was prohibited and being inapplicable were unnecessary.

The argument advanced that because article 918 of the statute directed the valuators (*inter alia*)

to fix the amount of indemnity if they grant any and if not state their refusal

therefore an award must be made, the lands mentioned, and the proprietor indicated, did not seem to me applicable at all to such a case as the one before us where there was not any discretion to grant or refuse indemnity the granting of such being expressly prohibited by statute. The article was obviously applicable only to those cases where the circumstances entitled valuators to give or withhold in their judgment indemnity or damages.

Inasmuch, however, as, owing to a deviation in a part of the road in question valuators were appointed and a valuation actually made, it is not necessary to determine whether a valuation is in every case absolutely necessary or not. The only objection we have to deal with here is that a valuation made, but not containing the name of the proprietor and the number of the lot of which the land taken formed part, is bad and the omissions necessarily fatal.

The objection to the number of the lot being omitted could, I think, in any case be cured by reference to the *procès-verbal* which formed part of the record of the proceedings preceding the valuation. The other defect which might possibly be held fatal in cases requiring a valuation of either lands or improvements cannot in my opinion if proper effect is to be given to

the curative section of the Act, art. 16, be held fatal in this case. That section reads as follows:

> No objection founded upon form, or *upon the omission of any formality even imperative*, can be allowed to prevail in any action, suit or proceeding respecting municipal matters, unless substantial injustice would be done by rejecting such objection, or unless the formality omitted be such that its omission, according to the provisions of this Code, would render null the proceedings or other municipal acts needing such formality.

A valuation of lands with respect to which no indemnity could be awarded is surely the merest formality. No substantial injustice would or could be done by rejecting an objection purely formal and it does appear to me that even assuming the necessity of going through the form of an award which was actually gone through and made in the case before us, the absence from the award of an ingredient which might be essential where land or improvements had to be valued should not in this case where no valuation was possible be held fatal.

Assuming, therefore, I am wrong as to a valuation or award being unnecessary and putting the case at its very strongest against the municipality that the name of the proprietor and number of the lot should have been stated in the valuation or award surely in a case such as we have before us such omission would be no more than the "omission of a formality even imperative" which under this section the courts are directed not to allow "unless substantial injustice would be done."

I am at a loss to conceive how in this case any substantial injustice could be done and would therefore agree with the judgment below and dismiss the appeal with costs.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Idington J.

IDINGTON J. (dissenting).—For the reasons assigned by Mr. Justice Lavergne and Mr. Justice Cross in support of the judgment appealed from I think this appeal should be dismissed with costs.

It seems that the only grounds (of the many originally taken) now held worthy of consideration are those arising out of the form of the award. One is that the land taken is not described.

How can that be so when it expressly sets forth that the valuators are dealing with the road directed in the homologated *procès-verbal* for the front of the 8th range from lot twenty inclusive to Coleraine township ? I should have thought that comprehensive and definite enough having regard to the limits assigned by law.

And when the valuators expressly state as they do in the award what and to whom compensation is due and is specifically awarded and as to the remainder of the said road that they do not allow any indemnity, seeing this road is the first road for the front of the said range, surely everything called for, including description of the lots now in question, is reduced to certainty.

It thus expressly declares all article 918 of the Municipal Code calls for except its requirement "to indicate the proprietor of such land."

Why is that requirement so needed? Clearly that whatever sum is awarded may be paid the proper party.

But when no sum is awarded what use for the indication of any name?

It would seem as if the well-known maxim *"cessante ratione legis cessat ipsa lex"* might well be here borne in mind. It is said, however, as another reason,

that the question of title is involved. Can that be so when we consider the Act, and especially article 920 thereof, which shews the money may be paid to the party in possession though not the real proprietor ?

Clearly the man actually in possession might have been named though not the real proprietor and yet the title would in due time have passed to the corporation, assuming, of course, everything else as here validly done.

The award was made the 7th of June, 1905, after notice had been duly served on King Bros., who did not choose to appear and who did not appeal within the thirty days given by the Act for doing so.

After everything had been thus done that could or need have been juridically done we are asked to say it was null because the name of King Bros., or some one else, was not inserted in the certificate, though no possible injustice was done or can be said to have been done to King Bros., whose names appear on record as parties notified as owners and who in fact owned these lots. Indeed it was after all this the appellants acquired by deed of the 13th of July, 1905, any right it now has to the lands in question.

Let us see what the curative provision for such a thing says. Article 16 of the Municipal Code is as follows:

16. No objection founded upon form, *or upon the omission of any formality even imperative*, can be allowed to prevail in any action, suit or proceeding respecting municipal matters, *unless substantial injustice would be done by rejecting such objection*, or unless the formality omitted be such that its omission, according to the provisions of this Code, would render null the proceedings or other municipal acts needing such formality.

I have already indicated how little even of a shadow of "substantial injustice" would be done by dis-

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Idington J.

missing this appeal and why as the title is not necessarily derivable from the party who may be indicated in such an award its omission would not render the proceeding null. It seems to have been only the omission of a formality; and that, under the circumstances, a needless one.

It strikes me that the scope and purpose of this section was just to obviate such possible occurrences.

DUFF J. concurred with the Chief Justice.

ANGLIN J.—This action is brought for a declaration of the plaintiffs' right to possession and to recover possession of land which the defendant claims to have expropriated for a road. The validity of the expropriation proceedings taken by the defendants is impugned upon several grounds, to all of which the court of first instance and the Court of King's Bench (Cimon and Gagné JJ. *ad hoc,* dissenting) refused to give effect.

Having regard to the view which I take of one of these grounds of attack, I find it unnecessary to refer to the others. After *procès-verbal* determining the propriety of constructing the road and defining the land required (art. 902), the Municipal Code provides, as a condition precedent to the right of the municipality to take possession, that there shall be an award of valuators fixing or refusing indemnity to the proprietor (art. 903). The appellants impeached the award in this instance for non-compliance with the provisions of article 918 of the Municipal Code which reads as follows:

> 918. In every award rendered by them, the valuators must mention the lot of which the land taken forms part, indicate the pro-

prietor of such land, as well as the by-law, *procès-verbal*, or order of the council in virtue of which such land is taken, and fix the amount of indemnity if they grant any, and if not, state their refusal.

The award in this case "mentions the lot of which the land taken forms part," if at all, only by reference to the *procès-verbal*. Neither directly nor by reference does it "indicate the proprietor." If the requirements of article 918 be merely formalities, though imperative, (must) their non-observance may be excusable under article 16 of the Municipal Code. But, in my view, neither the requirement of the mention of the lot or of the indication of the proprietor in the award can be so regarded; each must be deemed matter of substance.

By article 913 the valuators are required to lodge their award in the office of the council demanding the expropriation, and the secretary-treasurer of the council is required to give public notice (article 232) of such lodgment. The time for appeal from the award is by article 914 restricted to thirty days from the time the notice is so published. As the notice given is merely that the award has been lodged it would appear to follow that a proprietor whose land is covered by it may be prejudicially affected in his right of appeal by an omission from the award of the particulars imperatively directed by article 918. The mention of the lot alone might not suffice. The particular land taken need not be described and the interested proprietor might own only part of the lot (article 19, clause 25), and therefore might not know merely from "the mention of the lot" that the award in fact dealt with his land; hence the requirement that the proprietor should be indicated. Again, there might be error or mistake in the indication of the proprietor; hence the provision

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Anglin J.

requiring that the lot be mentioned. With both particulars set out, fair notice is given of the subject of the award and of the interests which it affects. In my opinion the reference to the *procès-verbal* which contains a description of the lands to be expropriated but no indication of the proprietors, is not a mention of the lot in the award sufficient to comply with article 918, which requires that the lot be mentioned "as well as the * * * *procès-verbal.*"

The reference in the award to the notice given to the proprietor—apparently the only document in these proceedings containing any indication of their names —is merely *"après avis dûment donnés"*—quite insufficient to warrant its being treated as an indication of the proprietors in conformity with article 918. Indeed, having regard to the explicit language of the article and the character and effects of the information which it contemplates shall be given by an award duly lodged and notified, I incline to the view that no mere reference, however precise, to another document, however accessible, can be deemed a sufficient compliance with its terms.

In the Court of King's Bench, Mr. Justice Lavergne did not allude to this objection to the validity of the award, disposing of what he deemed "irregularities" on the ground that by virtue of article 914 of the Muncipal Code, the *"sentence arbitrale"* had become final and the plaintiffs were, therefore, bound by it and without remedy.

But if the omission of the particulars in question renders the award a nullity—as I think it does—this answer of the learned judge is, with great respect, quite inconclusive.

Mr. Justice Cross proceeds on the assumption that

the requirement of the omitted particulars is merely a matter of form and that the omission is therefore "inoperative" under article 16 of the Municipal Code. I have already stated why I am unable to accept this view. Mr. Justice Cimon in his dissenting judgment, in which Mr. Justice Gagné concurred, applied to this case a principle familiar to English lawyers, which he states in these words: "En matière d'expropriation toute est de rigueur"; (see *Chamberland* v. *Fortier* (1)); and he concludes that the omission to indicate the proprietor in the *"sentence arbitrale"* is fatal. In this view, for reasons already stated, I fully concur.

Mr. Ritchie contended that, inasmuch as it is admitted that the road to be provided is a "first front road," and under article 906 "no indemnity must be allowed for the land required for a first front road," there was in reality no need for any award in regard to the land taken from the plaintiffs and that title passed from them to the defendant upon the homologation of the *procès-verbal.* He argued that upon its proper construction article 918 only requires that the proprietors to whom compensation is awarded shall be indicated.

Several answers to this view immediately present themselves. The first is that article 918 requires not that the proprietors to whom compensation is awarded shall be indicated, but that indication shall be given of the proprietors of the land taken. Moreover, it requires that as to such land and such proprietors the valuators shall "fix the amount of indemnity, if they grant any, *and if not, state their refusal*"—language which makes it clear beyond doubt that when land

(1) 23 Can. S.C.R. 371, at p. 380.

1909

KING'S ASBESTOS MINES v. MUNICIPALITY OF SOUTH THETFORD.

Anglin J.

is expropriated, whether the owner is awarded or is refused indemnity, the land must be mentioned and the proprietor indicated in the award.

And this is entirely reasonable, because the proprietor who is refused compensation should have the right to question upon appeal the grounds upon which such refusal is based, even in the case of a first front road. *King* v. *Township d'Irlande*(1), in 1893. The mention of the lot from which the land is taken as well as the indication of the proprietor is quite as important where indemnity is refused as where it is allowed.

Then article 903 provides that:

> The corporation becomes the proprietor of such land, and may take possession thereof, without any other formality, from the moment that the decision of the valuators, who fixed *or refused* an indemnity, has become final and without appeal.

The making of an award seems, therefore, to be a condition precedent in every case to the right of the municipal corporation to take possession.

I am, therefore, with great respect, of opinion that, although their objection is highly technical and they have shewn no real prejudice or injury, the appeal of the plaintiffs must be allowed with costs and that their claim for possession of the property in question must be upheld. They should also have their costs in the Superior Court and the Court of King's Bench to be paid by the respondents.

Appeal allowed with costs.

Solicitor for the appellants: *Samuel Deschamps.*

Solicitors for the respondents: *Méthot & Laliberté.*

(1) Q.R. 2 Q.B. 266, at p. 269.