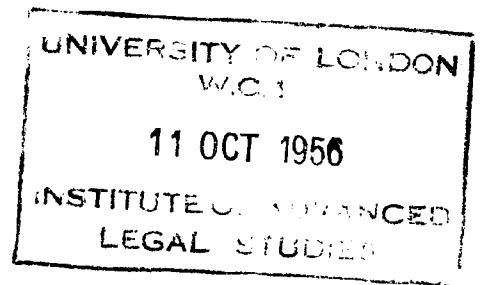


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In the Privy Council.

No. 76 of 1893.

ON APPEAL

*From the Court of Queen's Bench for Lower Canada
in the Province of Quebec. (Appeal side.)*

BETWEEN

CYPRIEN ALEXANDRE père et al - *Appellants;*

AND

EUSÈBE BRASSARD et al - *Respondents;*

AND

JEAN A. GRAVEL et al - *Mis-en-cause.*

CASE OF THE APPELLANTS.

This is an Appeal from a Judgment dated the 23rd day of December, Record, p. 147. 1892, of the Court of Queen's Bench for Lower Canada, affirming a Judgment rendered by the Superior Court, sitting at St. Jean District d'Iberville, of the 27th of June, 1892, dismissing the action of the Record, p. 11. 5 Appellants and others brought against the Respondents on the 20th of April, 1891.

The facts of the case are as follows:—

By a Decree dated the 9th day of September, 1831, and by a proclama- Record, p. 40. tion of the 20th day of August, 1835, the Parish of St. Jean l'Évangéliste, 10 in the district of Iberville, was duly constituted into a parish canonically and civilly.

Record, p. 82.

By a Decree dated the 8th day of October, 1890, the Ecclesiastical Authorities of the Roman Catholic Diocese of Montreal purported to decree the dismemberment of a portion of the said Parish of St. Jean l'Evangéliste and the dismemberment of a portion of the Parish of Ste. Marguerite de Blairfindie in the said district, and the dismemberment of a portion of the Parish of St. Valentin in the same district, and at the same time purported to decree the canonical constitution of the Parish of St. Blaise, composed of the said dismembered portions of the said Parishes of St. Jean, Ste. Marguerite, and St. Valentin. Such Decree was founded on a petition dated the 14th day of March, 1888, presented to the Archbishop of the said Roman Catholic Diocese of Montreal by the Respondents and others.

Record, p. 75.

Record, p. 91.

On the 16th day of November, 1890, the Respondents Brassard and others made application by petition to the Civil Commissioners of the said Roman Catholic Diocese of Montreal, to give civil effect to the said Decree of the 8th day of October, 1890, and recognition of the said new Parish of St. Blaise for civil purposes.

Record, p. 40.

Record, p. 75.

Record, p. 40.

Record, p. 40.

The said portion of the Parish of St. Jean l'Evangéliste, purporting to be dismembered by the said Decree of the 8th day of October, 1890, contained at the date of the said petition to the said Archbishop, upon which the said Decree of the 8th day of October, 1890, was founded, only 18 inhabitants being freeholders thereof and resident therein and interested in the matter, all of whom were Roman Catholics, and only two of such 18 signed the said petition to the said Archbishop, and the remaining 16 freeholders (being the plaintiffs in this action, and including the Appellants, all of whom had resided in the said parish for more than two years before the proceedings for dismemberment were taken) opposed the said petition, and have always been and are now opposed to such dismemberment of the said Parish of St. Jean l'Evangéliste and to the said constitution of the new Parish of St. Blaise.

Record, p. 40.

The territory described in the said Decree of the 8th day of October, 1890, and designated in the said petition to the said Archbishop as constituting the new Parish of St. Blaise (being the said dismembered portions of the said three old parishes), contained, at the date of such petition, only 128 inhabitants, being freeholders thereof and resident therein and interested in the matter, of whom 106 were Roman Catholics and the

remaining 22 were Protestants. Of these 128 freeholders, only 59, all of whom were Roman Catholics, signed and made the said petition to the said Archbishop.

The said petition to the said Civil Commissioners was signed by only Record, p. 91.
 5 58 of the said 128 freeholders, all of whom were Roman Catholics, and Record, p. 40.
 had signed the said petition to the said Archbishop, and of such 58, two
 only were freeholders of the said dismembered portion of the parish of
 St. Jean l'Évangéliste. The said Protestant freeholders did not sign either Record, p. 40.
 of the said petitions.

10 In or about the month of November, 1890, 26 of the said freeholders Record, 40 and
 who had not signed either of the said petitions (including the Appellants) pp. 96 seq.
 filed oppositions to the said petition to the said Commissioners, containing
 (amongst others) allegations to the following effect, namely:—That the
 formalities required by law for the dismemberment of the said old parishes,
 15 and the formation of the said new one had not been complied with, and
 that the said petition to the said Archbishop for the said dismemberment
 and formation was not signed by a majority of the inhabitants being
 freeholders of the whole territory designated in such petition, interested in
 the matter, as required by Article 3,371 of the Revised Statutes of the
 20 Province of Québec. That the portion of the Parish of St. Jean
 l'Évangéliste alleged to be dismembered, contained only 18 inhabitants
 being freeholders thereof interested in the said matter, and that two only
 of them had signed the said petition, the remaining 16 being opposed
 thereto, and that the said opposants had contributed largely to the
 25 construction of the Church and Parsonage of St. Jean l'Évangéliste, which
 had cost upwards of \$200,000, of which a balance of \$12,000 still remained
 due as a debt from the said parish, and that it was unjust and also contrary
 to Article 3,380 of the said Statutes to compel them against their will to
 become parishioners of any new parish.

30 On the 10th day of January, 1891, the said Commissioners, by a majority Record, p. 117.
 of three to two, rejected the said oppositions, and reported to the Lieutenant-
 Governor of the Province of Quebec, recommending that the said canonical
 Decree of the 8th day of October, 1890, be approved, and the said new
 parish be civilly recognised. The said new parish was afterwards civilly

recognised by Proclamation of the said Lieutenant-Governor in the month of September, 1892.

Record, p. 13.

In the month of April, 1891, the Appellants commenced an action in the Superior Court District of Iberville against the Respondents and the said Commissioners and the Attorney-General and the Provincial Secretary 5 of the Province of Quebec, claiming in effect that by the Judgment to be given in the action the said Decree of the 8th day of October, 1890, might be declared contrary to the law, null, and of no effect, and that the said Decision of the 10th day of January, 1891, of the said Commissioners, and all the proceedings, reports, orders and 10 decisions taken and made before and by the said Commissioners concerning the civil recognition of the said Decree of the 8th of October, 1890, might be declared contrary to law, null and of no effect, and might be annulled for all lawful purposes, especially so far as concerns the dismembered portion of the said Parish of St. Jean l'Évangéliste, and 15 that the defendants and parties cited be enjoined to cease all proceedings concerning the obtaining of the civil recognition of the said dismemberment of the said old parishes and the constitution of the said new parish, and that the Respondents might be ordered to pay jointly and severally to the Appellants the sum of \$600 as damages, and also claiming that a pro- 20 visional order should be made requiring the Respondents and the said parties cited to suspend further action until final judgment.

Record, p. 22.

Record, p. 17.

The Appellants by their declaration in the said action allege the facts hereinbefore stated, and also allege that the said Decree of the 8th day of October, 1890, is contrary to law, null, and of no effect for the following 25 reasons, amongst others, viz.:—

- (1) Because the said Petition to the Archbishop, upon which the Ecclesiastical Authorities proceeded to the pronunciation of the said Decree of the 8th day of October, 1890, was not and is not made and signed by the majority of the freeholders residing in 30 the territory designated in such Petition as to be dismembered from the said Parish of St. Jean l'Évangéliste interested in the matter.
- (2) Because the same Petition was not and is not made and signed by the majority of the freeholders residing in each of the said 35

territories designated in such Petition as to be dismembered from the said Parishes of St. Jean l'Evangéliste, of St. Valentin and of Ste. Marguerite de Blairfindie, interested in the matter, and was not and is not made and signed by the majority of the freeholders residing in the territory of the alleged new Parish of St. Blaise interested in the matter.

(3) Because the said old parishes to be dismembered had contracted debts for the erection of churches and presbyteries, and that the said debts had not been paid and satisfied, and especially that the said Parish of St. Jean l'Evangéliste had duly contracted a debt exceeding 20,000 dollars for the construction of a presbytery, and that upon such debt a sum not exceeding 12,000 dollars was still due from the said parish, and such parish could not therefore be dismembered until such debt was paid and satisfied.

The said declaration also contains allegations to the following effect— Record, p. 19.
namely, that two only of the said 18 freeholders of the said territory purporting to be dismembered from the Parish of St. Jean l'Evangéliste, interested in the matter, made and signed the said petition to the Commissioners ; and that such petition was not, and is not made and signed by ten or by a majority of the inhabitants, being freeholders of the said territory, interested in the matter. And that the said Ecclesiastical Authorities had not and have not the right or power to dismember the said parishes, and especially the said parish of St. Jean l'Evangéliste, or to constitute the said new Parish of St. Blaise, in or by the said Decree of the 8th of October, 1890, and that such Decree, and all proceedings, orders and decisions which have taken place and have been passed before and by the said Ecclesiastical Authorities concerning such Decree, are contrary to law, null, and of no effect. And that the said Commissioners had not and have not any right or power to proceed to the civil recognition of the said Decree, and that the said decision of the said Commissioners rejecting the opposition of the Appellants to the said recognition of the said Decree, and all proceedings, orders, and decisions which have taken place before or been made by them, the said Commissioners, concerning such civil recognition, are contrary to law, null, and of no effect.

Record, p. 21. The Appellants, by their said declaration, make allegations showing,
 Record, pp. 56 to 72. as is the fact, that they are greatly injured in the possession and enjoyment
 of their rights and advantages, and the value of their property greatly
 depreciated by and owing to the said Decree of the 8th day of October,
 1890, and the said Decision of the said Commissioners of the 10th day of 5
 January, 1891.

Record, p. 23. On the 20th day of April, 1891, the resident Judge in the district
 made an *interim* Order in the said action that all further proceedings
 concerning the civil recognition or constitution of the said new parish be
 suspended until otherwise ordered. 10

Record, p. 35. On the return of the action the Attorney-General and the Provincial
 Record, p. 24. Secretary made default, and the Commissioners, by formal declaration,
 Record, p. 24. submitted themselves to the decision of the Court. The Respondents
 appeared by Counsel and pleaded in effect—

- (1) That the said Decree of the Ecclesiastical Authorities of the 8th 15
 of October, 1890, had been made after all the formalities
 required by law had been fulfilled, and that the Court had no
 right to revise the said Decree, and had no jurisdiction in the
 matter as the only authorities who could pronounce upon the
 validity of the Decree in question were the Ecclesiastical 20
 Authorities of a higher rank than those of the diocese of
 Montreal.
- (2) That the decision of the Civil Commissioners of 10th January,
 1891, had been made after all formalities required by law had
 been complied with, and that the Court had no right to revise 25
 the said decision and no jurisdiction over the said Commissioners,
 as they were a special tribunal constituted by the Legislature of
 the Province of Quebec, and the executive Council of the said
 province, and that if there was any power of revision over their
 decision, it was in the Provincial Government alone. 30
- (3) That the Appellants were not responsible for the debt remaining
 upon the church and parsonage of St. Jean l'Evangéliste ; and
- (4) The general issue.

The Appellants by their Replications, so far as material to be stated, Record, p. 28. joined issue upon the pleas of the Respondents.

The material allegations of the plaintiffs' declarations were proved by Record, pp. 34 to admissions and the examination of witnesses. 122.

5 The said action came on for trial before Mr. Justice Tellier, and on Record, p. 11. the 27th day of June, 1892, the Court being of opinion that an Appeal to the Superior Ecclesiastical Authority was the only way open to the Appellants to obtain the cancellation of the said Decree, and that it was the province of the Lieutenant-Governor to decide upon applications and 10 oppositions made by parties interested, and also as to the decision given and the report made by the said Commissioners, and that the Court had no authority to annul or revise the said decision and report or to define or regulate the action of the Lieutenant-Governor, or to make any award as to the damages claimed, directed the Appellants to lodge their Appeal in the 15 proper seat, and mulcted the Appellants in costs.

On or about the 30th June, 1892, the Appellants appealed from the Record, p. 2. decision of the said Superior Court to the Court of Queen's Bench for Lower Canada, in the Province of Quebec, and on the 23rd day of December, 1892, that Court, after having heard the parties by their Record, p. 147. 20 advocates, and having considered the Judgment appealed against, confirmed the said Judgment, with costs against the Appellants, the Honorable Mr. Justice Hall dissenting. The reasons of the Judges for the Judgments respectively delivered by them are set out at pages 158 to 176 Record, pp. 158 to of the Record. 176.

25 On the 16th day of January, 1893, the Appellants made a motion to Record, p. 149. the said Court of Queen's Bench for leave to appeal to Her Majesty in Her Privy Council against the said Judgment or Order of the 23rd day of December, 1892, and the said Court, on the 23rd day of January, 1893, rejected the said motion with costs.

30 Subsequently, on the petition of the Appellants, presented to Her Record, p. 149. Majesty in Her Privy Council, special leave to Appeal from the said Judg-

ment or Order of the Court of Queen's Bench was given upon the usual conditions, which have been duly complied with, and the transcript and evidence in the said action have been duly transmitted.

The Appellants submit that the said Judgment or Order of the said Superior Court of the 27th of June, 1892, and the said Judgment or Order of the said Court of Queen's Bench of the 23rd day of December, 1892, which deal with important questions (*inter alia*) as to the revising or controlling power of the Superior Court and the Court of Queen's Bench over the Ecclesiastical Authorities and Civil Commissioners, with regard to the dismemberment of parishes, ought to be reversed, altered, or varied, and Judgment entered for the Appellants, granting them the relief claimed in their said action for the following amongst other—

REASONS.

1. Because the said Petition to the said Archbishop, upon which the said Ecclesiastical Authorities proceeded to the pronouncement of the said Decree of the 8th day of October, 1890, was not made and signed by the majority of the inhabitants, being freeholders of the territory designated in the said Petition, as to be dismembered from the said parish of St. Jean l'Évangéliste interested in the matter, as required by Article 3,371 of the Revised Statutes of the Province of Quebec.
2. Because the same Petition was not made and signed by the majority of the inhabitants, being freeholders of each of the said territories designated in the said Petition as to be dismembered from the said Parishes of St. Jean l'Évangéliste,

Ste. Marguerite de Blairfindie and St. Valentin respectively interested in the matter as required by the said Article 3,371.

- 5
3. Because the same Petition was not made and signed by a majority of the inhabitants, being freeholders of the aggregate territory designated in the said Petition as the territory of the said new Parish of St. Blaise interested in the matter as required by the said Article 3,371.
- 10
4. Because, in determining the majority required by the said Article 3,371, the Protestant freeholders of the territory designated in the said Petition interested in the matter must be reckoned as well as the Roman Catholic freeholders.
- 15
5. Because the said Parishes of St. Jean l'Evangeliste, Ste. Marguerite de Blairfindie and St. Valentin respectively, and especially the said Parish of St. Jean l'Evangeliste, had, prior to the proceedings for obtaining the said Decree of the 8th day of October, 1890, contracted debts for the erection of churches and presbyteries, and such debts have not been paid off and satisfied, and therefore it was and is unjust and contrary to Article 3,380 of the said Statutes that the said Decree of the 8th day of October, 1890, should be pronounced or receive civil recognition.
- 20
- 25
- 30
6. Because, for the above-stated reasons, or some or one of them, or otherwise, the

said Decree of the 8th day of October, 1890, was *ultra vires* contrary to law, null and of no effect, and neither the said Commissioners nor the said Lieutenant-Governor had any power to proceed to the civil recognition of such Decree. 5

7. Because the said Petition to the said Commissioners of the 16th day of November, 1891, was not made and signed by ten, 10 or a majority of the inhabitants, being freeholders of the territory designated in such Petition as to be dismembered from the said Parish of St. Jean l'Evangeliste interested in the matter as 15 required by Article 3,371 of the said Statutes.
8. Because the said Decision and Report, dated the 10th of January, 1891, and the Proclamation of the said Lieutenant- 20 Governor made in September, 1892, founded on such report and decision, are respectively *ultra vires* contrary to law, null and of no effect.
9. Because the Appellants interested in the 25 matter were and are prejudiced, injured and troubled in the possession and enjoyment of their rights and advantages as parishioners of the said Parish of St. Jean l'Evangeliste, and 30 will be deprived of such rights and advantages, and have suffered, and do suffer, great damage to their property and in their temporal interests and affairs

by reason of the said Decree of the 8th day of October, 1890, and the said Decision, Report and Proclamation.

- 5 10. Because the said Superior Court and the said
 Court of Queen's Bench respectively
 have power to assume jurisdiction and
 exercise control over the said Ecclesias-
 tical Authorities, and the said Civil
10 Commissioners in proceedings for the
 dismemberments of old parishes and
 the constitution of new parishes, and
 their proceedings, and to revise such
 proceedings, and, under the circum-
 stances, ought to have exercised such
15 power by declaring the proceedings
 in the present case illegal, null, and
 of no effect, and by granting to the
 Appellants the relief claimed by them.

VERNON R. SMITH.

In the Privy Council.

No. 76 of 1893.

ON APPEAL

*From the Court of Queen's Bench for Lower
Canada in the Province of Quebec. (Appel-
side.)*

BETWEEN

CYPRIEN ALEXANDRE père et al
Appellants;

AND

EUSÈBE BRASSARD et al *Respondents*

AND

JEAN A. GRAVEL et al *Mis-en-caus*

Case of the Appellants.

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