

# In the Privy Council.

No. 26 of 1931.

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## ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC. (APPEAL SIDE.)

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BETWEEN

O. MARTINEAU & SONS, LIMITED (Plaintiff) - *Appellant*

AND

THE CITY OF MONTREAL (Defendant)

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and

THE ATTORNEY - GENERAL FOR THE  
PROVINCE OF QUEBEC (Intervenant) - *Respondents.*

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## CASE

OF THE ATTORNEY-GENERAL FOR THE PROVINCE OF QUEBEC.

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1. This is an appeal from the unanimous judgment of the Court of King's Bench (Appeal Side) of the Province of Quebec, delivered on the 12th of December, 1930, dismissing the appeal of the Appellant (Plaintiff in the Superior Court). Reco p. 309.

2. The Appellant by its amended Declaration asked that the proceedings in an expropriation made by the City of Montreal should be annulled and set aside. p. 3.

3. The Appellant served notice on the Attorney-General of Quebec that it was intended at the hearing to contest the constitutionality of—

Sub-section 11 of section 28 of Chapter 17 of the Revised Statutes of Quebec, 1925, entitled "An Act respecting the Quebec Public Service Commission," as amended by section 6 of Chapter 16 of the Act 16 George V, entitled "An Act to amend the Public Service Commission Act";

Record.

Section 58 of the said Chapter 17 of the Revised Statutes of Quebec, 1925 ; and also,

Section 38 of the Act 15 George V, Chapter 92, amending article 429 of the Charter of the City of Montreal.

These enactments are not very correctly described.

Section 28 of Chapter 17 of the Revised Statutes of Quebec, 1925, was replaced, by section 6 of Chapter 16 of the Act 16 George V, by a new section 28 and eleven following sections numbered 28*a* to 28*k*.

Sub-section 11 of section 28 of the Revised Statutes, 1925, Chapter 17, appears under the amendment as sub-section 9 of section 28*h*.

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4. The above mentioned provisions are as follows :—

The Revised Statutes of Quebec, 1925, Chapter 17, as amended by 16 George V, Chapter 16, section 6, provide section 28*h*, sub-section 9 :

“ 28*h*. The Commission shall also have jurisdiction. . .

\* \* \* \* \*

“ 9. Notwithstanding any provision in the charter of either of such cities respectively,—on any question arising respecting expropriation by the City of Quebec or by the City of Montreal for any municipal purpose (including the fixing of the compensation), which, under the said charters, is within the jurisdiction of any board of commissioners, assessor, arbitrator or other functionary or officer ; provided that every provision relating to expropriation in either of the said charters shall continue to govern expropriations by each of such cities respectively, with the exception of the modification introduced by this paragraph.”

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The Revised Statutes of Quebec, 1925, Chapter 17, section 58 :

“ 58. An appeal shall lie to the Court of King's Bench (Appeal Side) in conformity with article 47 of the Code of Civil Procedure, from any final decision of the Commission upon any question as to its jurisdiction, or upon any question of law, except in expropriation matters, but such appeal may be taken only by leave of a judge of the said court, given upon a petition presented to him within fifteen days from the rendering of the decision, or from the homologation thereof in cases where the same is required, notice of which petition must be given to the parties and to the Commission within the said fifteen days. The costs of such application shall be in the discretion of the judge.”

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15 George V, Chapter 92, section 38 :

“ 38. Article 429 of the Act 62 Victoria, Chapter 58, as replaced by the Act 4 Edward VII, Chapter 49, section 18, is again replaced by the following :—

“ 429. The president or acting-president of the Quebec Public Service Commission shall ascertain the compensation to be paid to the proprietor whose building or land is to be expropriated, and determine, if need be, the rights of the city mentioned in the foregoing articles for the acquisition of the whole or part of the said buildings.

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There shall be no appeal from the decision of the president or acting-president of the Public Service Commission.’ ”

5. The Appellant brought action in the Superior Court on the 3rd of September, 1927, and by its Declaration alleged that the City of Montreal took proceedings to expropriate the lands of the Appellant therein mentioned ; that on the 17th of June, 1927, the Respondent obtained, on petition to the Superior Court, an order for the president of the Public Service Commission to estimate the value of the said property in accordance with articles 421 and following of its charter and amendments, and that the president of the Public Service Commission proceeded with the expropriation proceedings in due course and made his report, dated 22nd August, 1927, fixing the compensation to be paid by the Respondent.

p. 2.  
p. 3.

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And the Appellant claimed that the petition of the Respondent before mentioned, as well as the report of the president of the Public Service Commission were null, illegal, ultra vires, for the reasons set out in paragraph 12A of the amended Declaration, which are briefly :—

p. 6.

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(A) Because the Respondent was not authorised by its charter to present the petition above mentioned to the Superior Court and there was nothing in the said charter authorising the Superior Court or a judge thereof to fix a day for the acting-president of the Public Service Commission to start the proceedings to ascertain the compensation to be paid to the Appellant on the expropriation ;

(B) Because sub-section 11 of section 28 of Chapter 17 of the Revised Statutes of Quebec, 1925, entitled “ The Public Service Commission Act,” as amended by section 6 of Chapter 16 of the Act 16 George V, entitled “ An Act to amend the Public Service Commission Act,” is illegal, ultra vires and unconstitutional ;

(C) Because section 58 of Chapter 17 of the Revised Statutes, 1925, is also illegal, ultra vires and unconstitutional ;

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(D) Because section 38 of the Act 15 George V, Chapter 92, amending article 429 of the Respondent’s Charter is also illegal, ultra vires and unconstitutional ;

Record.

(E) Because the sections above mentioned give to the Public Service Commission, as also to the president or acting-president of the Public Service Commission a judicial power and judicial functions which can only be given under the provisions of the British North America Act by the Governor-General of Canada, who alone appoints the judges of the superior, district and county courts in each Province ;

(F) Because these judges are so appointed to take cognisance of and decide on the acts concerning property and civil rights in the Provinces ;

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(G) Because by the terms of article 407 of the Civil Code of the Province of Quebec no one can be obliged to give up his property except for a purpose of public utility and on proper compensation, and that only the judges appointed by the Governor-General of Canada have the power to decide whether an expropriation is really for a purpose of public utility and to settle the compensation to be awarded for the expropriation thereof.

p. 21.

6. The Attorney-General intervened and by his declaration denied paragraphs (B), (C), (D), (E), (F) and (G) of No. 12A of the Appellant's amended Declaration.

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7. The intervention of the Attorney-General of Quebec is limited to maintaining the constitutionality and validity of these legislative enactments ; with the merits of the case otherwise he is not concerned.

8. The British North America Act, 1867, provides :—

“ 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated ; that is to say,—

\* \* \* \* \*

“ 13. Property and Civil Rights in the Province.

“ 14. The Administration of Justice in the Province including the Constitution, Maintenance, and Organisation of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

\* \* \* \* \*

“ 16. Generally all Matters of a merely local or private Nature in the Province.

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“ 96. The Governor-General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

\* \* \* \* \*

“ 100. The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.” Record.

9. The Superior Court, Archer, J., gave judgment for the Respondent on the 2nd of January, 1930, and maintained the intervention of the Attorney-General of Quebec and declared that the sections of the Acts mentioned in the amended Declaration and the Intervention were valid, legal and intra vires of the powers of the Province of Quebec. p. 215.  
p. 236, l. 3.

10. The Appellant appealed against the judgment to the Court of King's Bench (Appeal Side) and the appeal was heard before Dorion, Tellier, Bernier, Howard and Galipeault, JJ.

11. Judgment was given on the 12th of December, 1930, dismissing the appeal and confirming the judgment of the Superior Court. p. 309.

12. The judgment of the Court, which was delivered by Dorion, J., is at p. 310 of the Record, and setting out the three objections of the Appellant, of which the first is the unconstitutionality of the Acts, concludes that the objection based on the unconstitutionality of the Public Service Commission Act is unfounded. p. 310.  
p. 313, l. 38.

13. In his reasons for judgment the learned Judge of the Superior Court sets out the proceedings on expropriation as follows :— p. 215.

By article 421 of its charter (62 Victoria, chapter 58) the City can acquire by agreement or expropriation real property required for municipal purposes. p. 217, l. 6.

The compensation must include the real value of the property and damages occasioned by the expropriation.

Art. 429 of the Charter formerly read : “ There shall be a Board of Commissioners for the purpose of establishing the compensation to be paid . . . This Board shall be composed, etc.” p. 217, l. 6.

By the Act 15 Geo. V, chap. 92, sec. 38 : “ The President of the Public Service Commission shall determine the amount of the compensation . . . There shall be no appeal from the decision of the President.”

Art. 430 of the charter provides that the petition on an expropriation and notice thereof shall contain a description of the

Record

property to be expropriated and the Court or Judge to whom the petition is presented shall fix the day for the President to begin his work and the day for making his report.

Art. 434 gives the President power to summon witnesses and examine them on oath and prescribes that he must make an inspection of the property and take any other means he thinks proper to establish the fair and exact amount of the compensation.

After his report is made and signed as to the compensation awarded, the President deposits it in the office of the City Clerk who gives public notice of it and of the day on which the report will be submitted to the Superior Court for confirmation and homologation. 10

Finally Art. 439 concludes the proceedings thus :—

“ On the day fixed in the notice the city submits to the Superior Court the report of the President in order that it may be confirmed and homologated and the Court after having seen that the procedures and formalities prescribed by the preceding articles have been observed confirms and homologates the report and the decision of the Court is final as between all parties interested and is not subject to appeal. 20

“ Within thirty days after this judgment the city must deposit in the Court the amount of the compensation awarded  
“ . . . .”

The Plaintiff (Appellant) relies on the omission in the amendment to the charter of a petition to the Superior Court to fix the day for the President to commence his work and the day for making his report but there was no reason for the former section after the Act giving jurisdiction to the Public Service Commission.

It was the intention of the Act that there should be such a petition. The omission however is of no consequence.

Article 3 of the Code of Civil Procedure says :— 30

“ 3. Si ce code ne contient aucune disposition pour faire valoir ou maintenir un droit ou une réclamation, toute procédure adoptée qui n'est pas incompatible avec quelque disposition de la loi ou de ce code doit être accueillie et est valable.”

Besides the Plaintiff (Appellant) has suffered no damage ; has never claimed that the Court had not the right to hear and deal with the petition presented on the 17th of June, 1927 (Record, p. 3).

Further it has acquiesced in the proceedings by appearing and pleading its case before the Public Service Commission.

“ L'essentiel, c'était que l'audition de la cause en expropriation fut référée à la Commission des Services Publics par la Cour supérieure. Or elle l'a été. 40

“ Je suis donc d’opinion que la Cour supérieure avait toute l’autorité voulue pour référer telle qu’elle l’a fait, les expropriations en question à la Commission des Services Publics qui avait le droit, par son Président, d’entendre les parties et faire rapport.”

Record.

It is evident that subsection 9 of sec. 28 of the Public Service Commission Act gives a rule which is matter of procedure and not one of the organisation of a Court. Its purpose was the substitution of the Public Service Commission for the Board of Commissioners which was competent previously.

p. 223, l. 16.

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The function of the Board of (expropriation) Commissioners which the Public Service Commission succeeded was limited to determining the value. It was the Superior Court that had jurisdiction to set in action the Board of (expropriation) Commissioners, which was simply an arbitrator appointed to determine the value without its decision being executory.

The function of the Commission is certainly not that of a court. It acts as an arbitrator and makes a report to the Court the same as all other arbitrators do.

p. 224, l. 10.

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Subsection 9 of sec. 28 of the Public Service Commission Act is only a procedure enactment and this comes exclusively within No. (14) of sec. 92 of the British North America Act.

All the provisions for ascertaining the compensation on expropriations were not considered a judicial function at the passing of the British North America Act.

p. 224, l. 38.

On reference to our Municipal Code we find that in articles 797 and following expropriation took place without the concurrence of the Superior Court. There is not even homologation of the arbitrator’s decision by the Superior Court. There is no appeal from the arbitrator’s decision.

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Looking at 27-28 Vict., chap. 60 “ An Act to amend the Acts relating to the Corporation of Montreal,” it will be seen how before the British North America Act proceedings were taken in expropriation in the City of Montreal.

Thus subsection 12 of section 13 reads :—

“ On the day fixed in and by the judgment appointing the said Commissioners, the corporation of the said city, by their attorney or Counsel, shall submit to the said Superior Court or to one of the Judges thereof respectively, the report containing the appraisal of the said Commissioners for the purpose of being confirmed and homologated, to all intents and purposes; and the said Court or Judge as the case may be upon being satisfied that the proceedings and formalities hereinbefore provided for have been observed, shall pronounce the confirmation and homologation of the said report, which shall be final as regards all parties interested and consequently not open to any to appeal.”

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Record.  
p. 255.

It will be seen that the Court after being satisfied that the proceedings and formalities prescribed by the law have been fulfilled, must pronounce the confirmation and homologation of the report; the court has no power to inquire into the merits of the report.

Since this date to the amendment of the charter, the Superior Court has never had the right to inquire into the merits of the Commissioners' reports.

Under the present Act, the Commission is the official arbitrator but always under the same control of the Superior Court.

In my opinion the Act under which the city has proceeded to the present expropriation is constitutional, the provisions of this Act are within the competence of the Legislature of the Province of Quebec. 10

p. 226, l. 5.

There is no appeal from the decision of the Public Service Commission on expropriations by the City of Montreal. It seems evident that the Legislature of the Province of Quebec can give or take away a right of appeal. This power belongs to it under heads (13) and (14) of sec. 92 of the British North America Act.

**14.** Dorion, J., delivering the judgment of the Court of King's Bench on the appeal gave the following reasons. He said :—

p. 310, l. 34.

In their factum on the appeal the Appellants have reduced 20 the grounds of their claim under three heads :

1st. The unconstitutionality of the Public Service Commission Act in so far as that Act confers on the President of the Public Service Commission judicial power and judicial functions which under the provisions of the British North America Act 1867, can only be conferred by the Governor-General of Canada, who alone appoints the Judges of the Superior, District and County Courts in each Province.

The other two grounds of the appeal do not concern the constitutional question. 30

The learned Judge holds :

p. 312, l. 18.

That the President of the Public Service Commission is not a District or County Court Judge for he has jurisdiction throughout the Province.

That it is difficult to say what is a Superior Court but our judicial system being of English origin, the meaning of the word Superior Court in the Constitutional Act should have the same meaning as it has in English law.



Quoting Halsbury's Laws of England (Vol. 9, p. 11, No. 7) Record.  
that—

“ It is in connection with jurisdiction that we find the chief distinctions between superior and inferior courts . . . Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court . . . .”

10 He observes that the Public Service Commission and its president have no general judicial authority in the Province, and he adds :

Besides is the Public Service Commission a court of justice p. 313.  
at all ? It is a body organised for administrative purposes like the Railways Commission ; it does not dispense justice. It is apart from questions of justice or legal obligations that it extends, restrains or regulates the public services of water, light, transport and other public utilities.

20 The question submitted to the President of the Commission in the present case is not a litigation : the right to expropriate is not in dispute and if it were it could always be carried before a Court of justice.

30 “ La Cité a le droit absolu d'exproprier, mais elle ne peut forcer p. 313, l. 19.  
la demanderesse de lui céder sa propriété que moyennant une juste et préalable indemnité (C.C. 407) qui doit être fixée par le Président de la Commission. Les parties sont renvoyées à lui pour y procéder ; et la procédure commence ainsi avant qu'il soit question de contestation : il n'y a pas eu jusque là d'offres, ni de refus, ni de prétentions contraires émises. Il s'agit simplement de faire une constatation, et de s'enquérir de la valeur de la propriété et du montant des dommages qui résulteront de la dépossession. Tout se fait sous la surveillance de la Cour Supérieure. C'est elle qui dans le cas présent fixe le jour où les procédures doivent avoir lieu et qui homologue les rapports, ou la décision, de la Commission (S.R.Q., ch. 17, sec. 54), et en cela même la Cour n'exerce pas un pouvoir judiciaire.

The objection based on the unconstitutionality of the Public Services Commission Act is therefore unfounded.

15. The Attorney-General submits that the appointment of the Public Service Commission or the President of that Commission to ascertain  
40 the compensation to be paid on the expropriation is one of an administrative and not a judicial nature and is within the power of the provincial Legislature in its jurisdiction under the headings (13), (14) and (16) above quoted of section 92 of the British North America Act, 1867.

Record.

Further the Public Service Commission is not a superior, district or county court in the Province.

**16.** The proceedings for ascertaining the value of the property expropriated and fixing the amount of the compensation which the owner is entitled to be paid on the expropriation is a matter of procedure within the power of the Provincial Legislature under section 92 (14) "The Administration of Justice in the Province including the Constitution, Maintenance, and Organisation of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts." 10

**17.** It seems that in all cases of expropriation the fixing of the amount of the compensation was not a judicial function when the British North America Act, 1867, came into force.

The power of fixing this compensation was given to arbitrators.

See the following :—

For municipal expropriations in Upper Canada, Consolidated Statutes of Upper Canada (1859), Chapter 54, section 358, paragraphs 1 to 13. The arbitrators' award was subject to the jurisdiction of the Superior Court.

For expropriations of lands taken for roads, bridges, public buildings, under the Act concerning Municipalities and Roads in Lower Canada, 20 Con. Stats. L.C., Chapter 24, section 50. Appraisers fix the value.

For expropriations by road companies, under the Road Companies Act, Con. Stats. L.C., Chapter 70. Arbitrators are named to make the valuation (sec. 30).

For expropriations under the Railway Act, Consolidated Statutes of Canada (1859), Chapter 66. Arbitrators make the valuation (sec. 11).

Section 96 of the British North America Act in speaking of superior courts, county and district courts must have intended the meaning which these words had at Confederation and not to have included things which they did not designate. 30

The Privy Council in *Royal Bank v. Larue* [1928] A.C., 187, has approved the rule that the same meaning must be given to the expressions in the Act as they had at the passing of the Act.

Therefore section 96 must be held as not including in the matters within its ambit the determining of compensation on expropriations.

The Attorney-General submits that the judgment appealed from is right and should be affirmed, so far as his intervention is concerned, for the following, among other

Record.

### REASONS.

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- (1) BECAUSE the législation impugned is within the exclusive power of the Province of Quebec and is constitutional.
- (2) BECAUSE the Public Service Commission is neither—
- (A) a superior court, of which it has not the essential attributes, nor
- (B) a district or county court, for its jurisdiction extends throughout the Province.
- (3) BECAUSE the Public Service Commission is not a court of justice at all but only an administrative body charged with the particular duty of ascertaining the amount of the compensation properly payable on the expropriation.
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- (4) BECAUSE at the time of the passing of the British North America Act, 1867, the fixing of compensation on expropriations was something left for the determination of arbitrators and was not to be included in the functions of a Court of justice.
- (5) BECAUSE such fixing of the compensation is a matter of procedure and the Provincial Legislature has exclusive jurisdiction over procedure in civil matters in the provincial courts.
- (6) BECAUSE the Provincial Legislature is the only one having power to constitute such a Commission.
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- (7) FOR THE REASONS appearing in the judgment of Archer, J., in the Superior Court, and those of Dorion, J., delivering the unanimous judgment of the Court of King's Bench on the appeal.

CHARLES LANCTOT.

AIMÉ GEOFFRION.

In the Privy Council.

No. 26 of 1931.

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(Appeal Side.)

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PROVINCE OF QUE-  
BEC (Intervenant) - *Respondents.*

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CASE

OF THE ATTORNEY-GENERAL FOR  
THE PROVINCE OF QUEBEC.

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