



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, CYPRIEN
ALEXANDRE Fils, HIPPOLYTE LANCIAU,
AMBROISE NOLETTE, VINCENT POIRIER,
JOSEPH HARBEC, and HONORÉ LORD *Appellants,*

AND

EUSÈBE BRASSARD, and fifty-five other
Defendants *Respondents,*

AND

JEAN A. GRAVEL and four others *Mis-en-cause.*

Case of the Respondents.

1. This is an appeal by special leave from the judgment of the Court of Queen's Bench for Lower Canada which by a majority affirmed the decision of the Judge of the Superior Court before whom the action was tried in favour of the Defendants, the now Respondents. There are few, if any, material facts in dispute and the questions involved relate (1) to the validity of a decree of the Roman Catholic Archbishop of Montreal, dated the 8th of October 1890, whereby he dismembered a portion of the Roman Catholic parish of St. John the Evangelist in his diocese and constituted the said portion, together with certain portions of two adjoining parishes, a new parish for ecclesiastical purposes,

Rec. p. 82.

Rec. p. 117. under the name of St. Blaise : (2) to the validity of a Report dated the 10th of January 1891, made by the Commissioners of the Diocese, wherein they recommended the Lieutenant-Governor to grant civil recognition of the Archbishop's said Decree : (3) to the jurisdiction of the Court of Queen's Bench, Lower Canada, in a civil action brought by some of the parties aggrieved, to enquire into the validity of the said Decree and Report respectively, and to restrain further proceedings thereon. Both Courts have held that they have no such jurisdiction.

Declaration at p. 17 to 22 of the Rec. 2. The action was brought on the 20th of April, 1891, by sixteen freeholders of the dismembered portion of the said Parish of St. John against the present Respondents, who were the signatories of a petition to the Archbishop in favor of the creation of the Parish of St. Blaise, as hereinbefore mentioned, and also freeholders of land comprised within the limits of the new parish, the Commissioners and the Attorney-General and provincial Secretary being brought into the proceedings as parties *mis-en-cause*. The Plaintiffs claimed a declaration that the decree of the Archbishop of Montreal hereinbefore referred to was contrary to law and invalid, especially so far as related to the Parish of St. John—that the decision of the Commissioners and all reports, orders and decisions made thereon were also invalid, especially so far as related to the said parish—a mandatory injunction ordering the Respondents, the Commissioners and the other *mis-en-cause*, to abstain from any further proceedings concerning the civil recognition of the dismemberment of the said Parish of St. John and the creation of the new Parish of St. Blaise—and also claiming damages. The Report of the Commissioners was impeached upon the ground of the invalidity of the decree of the Archbishop upon which it proceeded, and the grounds upon which such decree was alleged to be invalid were the following :—

Rec. p. 19. (1.) That the petition to the Archbishop upon which his decree was founded was not signed by the majority of freeholders of the territory in the parish of St. John intended to be dismembered who were interested in such dismemberment.

(2.) That the petition was not signed by a majority of the freeholders of each of the dismembered portions of parishes or by a majority of freeholders in the intended new parish who were so interested.

(3.) That the respective parishes intended to be dismembered had contracted debts for the erection of churches and parsonages which were still unpaid.

Rec. p. 6. 3. Neither the Attorney General nor the provincial Secretary entered an appearance and the Commissioners submitted to the Judgment of the Court. The Respondents pleaded a denial of the Jurisdiction of the Court and also that the allegations contained in the declaration were unfounded in law and fact, and that the decree and report respectively were valid.

4. At the date of the cession of Lower Canada to England the jurisdiction both canonical and civil in reference to the creation or sub-division of parishes therein was vested in the respective bishops of the diocese, but subject (so far as related to civil recognition only) to the formal assent of the Governor as representing the Crown. This jurisdiction was expressly recognised after the cession by an ordinance (31 Geo. III. c. 6). Subsequently various statutes dealing with the subject of civil recognition of such parishes (but not, as the Respondents submit, in any way affecting the ecclesiastical jurisdiction of the bishop therein) were passed by the provincial legislature, many of which are summarised in the Judgment of Hall, J. at pp. 160, 161 of the Record. The provisions of these Statutes are embodied in Title IX. (Religious Matters) ch. 1 of the Revised Statutes of Quebec, the provisions most material to the present case being the following :—

Rec. p. 160.

Sections 3360 to 3370 relate to the appointment of Commissioners by the Lieutenant-Governor in each Roman Catholic Diocese of the province and to the powers of such Commissioners.

Section 3366 is as follows :—

“ All cases respecting either the erection or division of parishes, or the building and repairing of churches, parsonage houses and cemeteries, and their appurtenances, belonging to Roman Catholics, shall be proceeded with and adjudged upon by the Roman Catholic bishop or person administering the diocese in which it is necessary to act, and by the commissioners appointed for the said diocese.”

Section 3371—

“ Whenever in any of the following cases it is required :—

“ 1. To canonically erect any new parish.

“ 2. To dismember or subdivide any parish.

“ 3. To unite two or more parishes.

“ 4. To alter or modify the bounds, limits or division lines of any parish already erected ;

“ or when in any parish or mission, it is required to construct :—

“ 1. A parish church.

“ 2. A chapel.

“ 3. A chapel of ease.

“ 4. A sacristy, or other appurtenance of any such church or chapel.

“ 5. A parsonage house and the appurtenances thereof.

“ 6. A cemetery, or to alter or repair the same, or any of them ;

“ on a petition of a majority of the inhabitants, being freeholders, of the territory designated in such petition interested in the matter, being presented to the Roman Catholic bishop of the diocese, or, in case of the absence of the bishop or the vacancy of the episcopal see, then such petition being presented to the administrator of the said diocese, the ecclesiastical authorities, and such other person as they may appoint and authorize for the purposes aforesaid, proceed, according to ecclesiastical law and the practice of the diocese, to the final decree for the canonical erection of any parish, or the division or union of any parishes, or to the order and decree finally determining the location and construction of any new parish church or chapel, or chapel of ease, or sacristy, or of any parsonage house or cemetery, and the principal dimensions thereof, or any alteration or repairs to be made in and to the same as the case may be.”

Section 3372 provides for notice to the persons interested before proceeding on the petition by reading and posting up the same on two consecutive Sundays at the door of the Church or Chapel of the parish.

Section 3373 provides (in the case of a decree being made on petition for sub-division or erection of a parish) for notice thereof, and of an intention to apply to the Commissioners of the diocese for civil recognition thereof being given by reading such decree, and notice on two consecutive Sundays from the pulpit of the parish Churches affected thereby.

Section 3374—

“ If within the delay of thirty days no opposition be made to the civil recognition of the canonical decree, or if the opposition be dismissed by the Commissioners, the secretary shall transmit the said canonical decree to the Lieutenant-Governor, together with a certificate signed by him to the effect that no opposition has been filed with him within the said period, or that having been filed it was dismissed.”

Section 3375—

“ On receipt of such decree and certificate, the Lieutenant-Governor may, without any *proces-verbal* or report from the Commissioners, issue a proclamation under the Great Seal of the Province as provided for in Article 3381, which proclamation shall have and produce the same effect as a proclamation issued in virtue of a *proces-verbal* or report of the Commissioners.”

Section 3376—

“ If any opposition be filed as aforesaid, and the Commissioners consider that the same ought to be taken into consideration, they may then proceed to ascertain the extent, limits, boundaries and division lines of such parish, sub-division, dismemberment or union of parishes, and may

“ generally inquire into all things which have been done or ordered by the
 “ ecclesiastical authorities alone, or with regard to any alterations and
 “ modifications made by the said authorities in the limits, boundaries and
 “ division lines of the parishes or sub-divisions of parishes already
 “ established according to law ; of all which the said Commissioners shall
 “ make a report to the Lieutenant-Governor.

“ In such report they shall set forth the bounds and division lines of
 “ each parish or sub-division of parishes and of the alterations and modifi-
 “ cations to be made in parishes already established, and shall further
 “ declare the limits, bounds and division lines, which they may think it
 “ would be most for the convenience of the inhabitants to assign.

“ 2. In case they think necessary to make any changes or modifi-
 “ cations in the matters regulated and ordered by the canonical decree,
 “ the Commissioners shall consult the ecclesiastical authorities hereinabove
 “ mentioned, or such person as may be named by them for that purpose,
 “ and obtain their opinion on the subject and communicate the same in the
 “ report, together with all remonstrances and representations which any
 “ number of inhabitants have made to them in support of their demands
 “ or claims.

Sections 3380—

“ Nothing in this chapter, having relation to the dismemberment,
 “ division or sub-division of parishes already established or to the union of
 “ two or more parishes, or to the changing or altering the limits,
 “ boundaries or lines of demarcation of the said parishes, shall extend to
 “ any parish which has contracted debts for the erection of churches or
 “ parsonage houses therein, until the said debts are paid and satisfied.

Section 3381—

“ On the presentation of the *proces-verbal* of the Commissioners,
 “ containing their report as aforesaid, the Lieutenant-Governor may issue
 “ a proclamation under the Great Seal of the province, erecting such parish
 “ for civil purposes, and for confirming, establishing and recognising the
 “ limits and boundaries thereof ; such proclamation shall avail as a legal
 “ erection and confirmation, for all civil purposes, of the parish or parishes
 “ or sub-division of parishes therein designated, and of those which may
 “ have been formed by the dismemberment, union or sub-division of
 “ parishes erected and recognised by the *arrêt* of His Most Christian
 “ Majesty, dated third March, Seventeen hundred and twenty-two, or by
 “ any other subsequent letters-patent or proclamations.

Section 3410—

“ Nothing in this chapter shall render any of Her Majesty’s subjects
 “ of any class of protestants whatsoever, or any person whomsoever, other
 “ than Her Majesty’s subjects professing the Roman Catholic religion,

“ liable to be assessed or taxed in any manner whatsoever for the purposes of this chapter, or shall extend, in any manner or way whatsoever, to the erection, sub-division, dismemberment or union, or to the alteration of the bounds of any parish already formed or to be formed according to the establishment of the Church of England.”

5. The facts of the case as proved or admitted were as follows: On the 14th of March, 1888, a petition was presented to the Archbishop of Montreal praying him to dismember certain designated outlying portions of the three parishes in his diocese of St. John, St. Valentine and St. Marguerite (which were all three Roman Catholic parishes), and to form them into a separate parish under the name of St. Blaise on the ground mainly that the distances of petitioners' houses from the parish churches of their respective parishes, which in the case of St. John was upwards of 6 miles, formed a serious impediment to their attending religious worship and to the religious education of their children. The Archbishop, after considering the opposition of the now Appellants on the 8th of October made the decree in question on which he granted the prayer of the petition it being expressly stated therein that the decree could have no effect civilly unless confirmed by the proclamation of the Governor General. The Appellants and the non-appealing Plaintiffs appealed against such decree to the Pope who confirmed the same.

6. The petition in question was signed by 59 Roman Catholic freeholders of the portions of the said three parishes which it was sought to form into the new parish of St. Blaise. The total number of freeholders in such portions of the said three parishes was 128 of whom 22 were Protestants. Of the signatories 2 only were freeholders in the parish of St. John the total number of freeholders in the said portion of that parish being 18. The petition in question was therefore signed by a majority of Roman Catholic freeholders of the territory designated in the petition but not by a majority of Roman Catholic freeholders in each portion of the three parishes forming such territory, or by a majority of the total number of freeholders in the three portions of parishes if protestant freeholders are to be reckoned. No evidence, however, was given that any of the 22 Protestant freeholders were in any way interested in the prayer of the petition, and it was admitted that none of them had at any stage raised any opposition to the decree or to the confirmation thereof. It was further proved that the invariable ecclesiastical practice of the diocese within living memory had been to exclude protestants in the computation of freeholders under the 3371st section.

7. At the date of the said petition there were certain liabilities outstanding in the parish of St. John for the construction of a parsonage house and for church decoration. It was proved, however, that such debts had not been contracted by nor were due from the parish, but by and from the Fabrique, and that the yearly income of the Fabrique was sufficient to satisfy the annual instalments by which such liabilities were payable.

8. Upon the decree being obtained the Respondents, after giving the notices provided for by Sec. 3373, applied to the Commissioners of the Diocese for the civil recognition thereof. The Appellants and nine other persons who were co-plaintiffs in the action together with the Appellants, but who have not appealed, thereupon lodged an opposition to such application in which they raised similar objections to the validity of the decree to those raised in the present action, and also opposed the recognition thereof upon the merits. They did not object in any way to the jurisdiction of the Commissioners, but appeared before them on several occasions and called witnesses and addressed arguments in support of their opposition. The Commissioners on the 10th of January 1891 then addressed to the Lieutenant-Governor of the Province a report in which by a majority they stated that inasmuch as they considered that the decree was rendered on the petition of the majority of freeholders residing in the territory designated therein, that the appeal to the Pope had been rejected, that all proceedings were regular and the oppositions ill-founded, they rejected the oppositions and recommended that civil recognition should be granted.

Rec. pp. 96,
97.

Rec. p. 124.

9. The Appellants and the non-appealing Plaintiffs applied to the Court of Queen's Bench, Lower Canada, for a *certiorari* to quash the said Report, which was refused. They then raised the present action which came on for hearing before Mr. Justice Tellier in the Superior Court, who on the 27th of June 1892 gave judgment dismissing the action with costs, upon the ground that the Court had no jurisdiction to review either the Decree or the Report of the Commissioners thereon, nor to arrest the action of the Lieutenant-Governor thereon, nor to award damages. The reasoned Judgment appears at pp. 11 to 13 of the Record.

Rec. p. 11.

Rec. pp. 11—
13.

10. Upon appeal the Court of Queen's Bench consisting of Lacoste, C. J., Baby, Bossé, Hall and Wurtele, J. J., upon the 23rd December 1892, affirmed the judgment of the Court below upon the same ground of want of jurisdiction, Hall, J. dissenting.

Rec. p. 147.

Lacoste, C. J., whose reasons appear at pp. 171-174 of the Record, held that the canonical recognition of the new parish concerned Catholics only, who were the only persons interested therein, that even if the provisions of Sec. 3371 were not complied with such non-compliance would not invalidate the canonical effect of the decree, that it was consequently for ecclesiastical purposes at any rate a valid decree and that the Civil Courts had no jurisdiction to declare it null and void. He further held that the proceedings before the Commissioners were not judicial proceedings, that if they were the Appellants and other Plaintiffs had by appearing without protest accepted the jurisdiction, and that the Commissioners by entertaining and pronouncing an opinion upon the merits of the opposition had not exceeded their jurisdiction, and that if the contention of the Appellants and other Plaintiffs was well founded their remedy was by application before the Lieutenant-Governor.

Rec. p. 171.

Rec. p. 175. Wurtele, J., who delivered a separate Judgment, founded substantially upon the same reasons, stated that it was within his personal knowledge that persons who objected to the report of the Commissioners in favour of civil recognition of ecclesiastical parishes were heard before the Executive Council, who considered their objections and had thereupon in several instances refused to confirm the Report.

Rec. p. 158. Hall, J., who dissented, held that in computing the majority of ratepayers interested under Section 3371 Protestant ratepayers must be included; that the petition to the Archbishop was consequently not signed by the requisite majority; that no proceedings before Commissioners could validly be taken upon a decree founded upon a petition which failed to comply with these requisites; and that as the decree was intended as a preliminary to proceedings before the Commissioners for the civil recognition of the parish thereby created it was invalid, and could be declared so by the Civil Courts. He further, while accepting the decision in 1853 of the Courts of Lower Canada, in the case of *exparte Lecour* 3 Lower Canada Reports, (which decision was to the effect that no *certiorari* would lie to quash a report of the then Commissioners upon the ground that they were not discharging judicial functions) held that the legislation since 1853 had converted the functions of the Commissioners into judicial functions, that they had exceeded their jurisdiction and that the Court had jurisdiction to grant prohibition.

Rec. p. 148. Baby and Bossé, J.J., agreed with the majority but gave no further reasons.

11. The Respondents submit that the Statute 2, Vic. c. 29 (Lower Canada) under which the case of *exparte Lecour* was decided, does not materially differ in its language from the provisions of the revised statutes now in question, and that the decision in *exparte Lecour* has by the language of subsequent legislation on the subject received legislative recognition, or at any rate that it is too late now to question the correctness of that decision.

12. The Respondents submit that the judgment appealed from was correct and should be affirmed for the following amongst other

REASONS.

1. Because the Superior Court and the Court of Queen's Bench of Lower Canada had no jurisdiction to enquire into the validity of the decree of the Archbishop.

2. Because even if the petition to the Archbishop did not comply with the requisities of Section 3371, the decree was, notwithstanding, valid, at any rate for ecclesiastical purposes, and the Court consequently cannot as prayed declare it to be contrary to law or null and of no effect.

3. Because such petition did in fact comply with the requisites of section 3371, and is valid for all purposes.

4. Because the Archbishop did not in any way exceed his jurisdiction.

5. Because the Appellants, having without objection to the Archbishop's Jurisdiction, opposed before the Archbishop the prayer of the petition upon the merits are not now entitled to a declaration that the decree founded thereon is invalid.

6. Because the decree is that of a competent tribunal, on its face valid and if, in fact, the Archbishop exceeded his jurisdiction the proper remedy is by *certiorari*.

7. Because the Court of Queen's Bench has no jurisdiction at the instance of parties aggrieved to make a declaration that the decree is invalid or at any rate ought not as a matter of discretion to make such a declaration.

8. Because the proceedings before the Commissioners were not judicial proceedings.

9. Because if the proceedings before the Commissioners were judicial the Commissioners had jurisdiction (a) to entertain the opposition (b) to dismiss it (c) to make the report in question and any decision arrived at by them was correct.

10. Because if the Commissioners have exceeded their jurisdiction the remedy is by *certiorari* to quash the Report.

11. Because the Court of Queen's Bench for Lower Canada had no jurisdiction either (a) to restrain proceedings before the Commissioners; (b) to declare the report invalid; or (c) to restrain the Respondents from taking further proceedings upon the decree or report respectively, or at any rate as a matter of discretion ought not to exercise such jurisdiction.

12. Because the Commissioners were at the time of action brought *functi officio* and proceedings to restrain them from acting are consequently too late.

13. Because the Appellants having appeared before the Commissioners without objection to their jurisdiction and having contested before them the validity of the decree upon the grounds now put forward, are precluded from obtaining the relief now claimed, or at any rate relief ought upon that ground to be refused.

14. Because upon the facts proved or admitted the Appellants have failed to make out any ground for any part of the relief claimed.

15. Because the judgments and reasons of the Judges of the Courts below, other than Hall, J., are correct, and the reasons of Hall, J., are not correct.

R. W. MACLEOD FULLARTON.

. FRANCIS C. GORE.

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).

ALEXANDRE AND OTHERS

v.

BRASSARD AND OTHERS.

Case of the Respondents.

BOMPAS, BISCHOFF, DODGSON, COXE & BOMPAS,

4, GREAT WINCHESTER STREET,

Respondents' Solicitors.