

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Alexandre and others v. Brassard and others, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 9th February 1895.

Present:

The LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

[*Delivered by Lord Macnaghten.*]

The question in this case relates to the canonical erection and the civil recognition of a new parish in the district of Ibberville in the province of Quebec called St. Blaise which has been formed by the dis-memberment of three old parishes, St. Jean l'Évangéliste, St. Marguerite de Blairfindie, and St. Valentin.

The Appellants challenge the validity of the proceedings which resulted in the civil recognition of the parish of St. Blaise on two grounds. They allege (1) that on the occasion of the application to the ecclesiastical authorities for the canonical erection of the parish an essential condition prescribed by law was not observed, and they contend that in consequence of that omission no legal foundation was laid for an application

for civil recognition. They also allege (2) that in the case of the parish of St. Jean l'Évangéliste there existed a debt of the parish which formed a statutory bar to its dis-memberment.

It appears that at the date of the cession of Lower Canada the jurisdiction both canonical and civil in reference to the erection and subdivision of parishes was vested in the respective Bishops of the Diocese, but subject so far as related to civil recognition to the formal assent of the Governor as representing the Crown. After the cession this jurisdiction was recognised by an Ordinance 31 George III. c. 6. Various statutes were subsequently passed dealing with the matter. The provisions of these statutes are now embodied in Title IX. (Religious Matters) ch. 1 of the Revised Statutes of the Province of Quebec.

Chapter 1 is intituled:—"Erection and Division of Parishes—Construction and Repair of Churches Parsonages and Cemeteries—and Fabriques." It is divided into sections and sub-sections under which the appropriate Articles are arranged.

Section 1, containing Articles 3360—3370 both inclusive, relates to the appointment of Commissioners by the Lieutenant-Governor in each Roman Catholic Diocese of the Province and to the general powers of such Commissioners.

Section 3366 is in the following terms:—

"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 II. is headed:—"Erection and Division of Parishes." Sub-section 1 of Section II. headed "Canonical erection of Parishes" contains Articles 3371 and 3372.

Article 3371, so far as material to the present question, is as follows:—

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

“ 1. To canonically erect any new parish ;

“ 2. To dismember or subdivide any parish ;

• • • • •
 “ on a petition of a majority of the inhabitants, being free-
 “ holders, of the territory designated in such petition interested
 “ in the matter, being presented to the Roman Catholic Bishop
 “ of the Diocese the ecclesiastical authorities,
 “ and such other person as they may appoint and authorise 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 as the case may be.”

Article 3372 provides for notice to the persons interested before proceeding on the petition.

Sub-section 2 of Section II. headed :—“ Civil erection of Parishes.” contains Articles 3373—3382 both inclusive. Those Articles so far as material to the first objection on the part of the Appellants are as follows :—

“ Article 3373 :—Every decree for the canonical erection of
 “ a new Parish or for the dismemberment or union of any
 “ Parishes rendered according to the
 “ canonical laws forms and usages followed in the Roman
 “ Catholic Dioceses in the Province, shall to have its effect be
 “ publicly read and published on two consecutive Sundays
 “ from the pulpit in the Churches or Chapels of the Parishes
 “ or missions interested in the said erection dismemberment
 “ division together with a notice informing
 “ the persons interested that on the expiration of 30 days, or
 “ one day later if the 30th day be a Sunday or a holiday after
 “ the last reading and publication of the said Canonical Decree,
 “ ten or the majority of the inhabitants being freeholders
 “ mentioned in the Petition presented to the ecclesiastical
 “ authorities for the rendering of the said Canonical Decree
 “ will apply to the Commissioners for the civil recognition
 “ thereof, and that all having or pretending to have any
 “ opposition or claim to bring against the said civil recognition
 “ must file the same before the expiration of the said 30 days
 “ with the Secretary of the said Commissioners.”

“ Article 3374 :—If within the delay of 30 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.”

“ Article 3375 :—On receipt of such Decree and Certificate, the Lieutenant Governor may without *procès-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 *procès-verbal* or report of the Commissioners.”

Article 3376 deals with the case of an opposition which the Commissioners consider ought to be taken into consideration.

“ Article 3381 :—On the presentation of the *procès-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-divisions 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 3rd March 1722, or by any other subsequent letters patent or proclamations.”

Such being the law applicable to the case the facts may be stated very briefly :—

In March 1888 a petition was presented to the Archbishop of Montreal, praying him to dismember certain outlying portions of the three parishes and to form them into a separate parish with a view to the convenience of the inhabitants in regard to religious worship and education. After considering the opposition of the present Appellants and certain other persons, the Archbishop issued a decree granting the prayer of the petition.

The petition on which this decree was made was signed by a majority of the 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 territory unless Protestant freeholders ought

to be excluded from the computation. And therefore according to the view of the Appellants and the construction which they seek to place upon the enactment the petition was not in order.

Upon the decree of the Archbishop having been obtained the Respondents applied to the Commissioners of the diocese for civil recognition of the new ecclesiastical parish. The Appellants, and certain other persons who were co-plaintiffs with them in the action, but who have not appealed, lodged an opposition. They appeared before the Commissioners, called witnesses, and were heard in support of their objections. On the 10th of January 1891 the Commissioners made a report to the Lieutenant-Governor, in which by a majority they stated that inasmuch as they considered that the decree had been rendered on the petition of the majority of freeholders residing in the territory designated in the petition, that an appeal from the decree to the Pope had been rejected, that all proceedings were regular, and that the oppositions were ill-founded, they rejected the oppositions and recommended that civil recognition should be granted.

The Appellants, and the Plaintiffs who have not appealed, applied to the Court of Queen's Bench for a writ of certiorari to quash the report. The application was refused. They then raised the present action, asking in effect for a declaration that the proceedings to which they objected were invalid, and claiming an injunction and damages. The action came on for hearing in the Superior Court before Tellier J. On the 27th of June 1892 that learned Judge gave judgment dismissing the action with costs, upon the ground that the Court had no jurisdiction to review the Archbishop's decree or the report of

the Commissioners, or to arrest the action of the Lieutenant-Governor.

In September 1892 civil recognition was accorded to the parish of St. Blaise by a proclamation under the great seal of the Province.

On appeal to the Court of Queen's Bench the judgment of the Superior Court was affirmed on the 23rd of December 1893 by Lacoste C. J. Baby Bossé and Wurtele J.J., Hall J. dissenting.

Notwithstanding the able arguments on behalf of the Appellants their Lordships are of opinion that the judgment of the Court of Queen's Bench affirming the decision of Tellier J. is correct.

It was not disputed at the Bar that the decree of the Archbishop was a good and valid decree for all ecclesiastical purposes, and that the parish of St. Blaise has been canonically erected. The argument on behalf of the Appellants was that the ecclesiastical authorities were not properly put in motion, and that although it was not competent for the Court to set aside the canonical decree, the Court was at liberty to inquire into the proceedings which gave rise to it, and they contended that if those proceedings were found not in accordance with the provisions of the law, the decree could not be treated as a decree available for the purpose of founding civil recognition.

Their Lordships cannot take this view. It appears to them that the provision in question is not a limitation on the jurisdiction of the ecclesiastical authorities, or a condition precedent to the validity of all subsequent proceedings. It is rather in the nature of a rule of procedure, and in their Lordships' opinion it is for the ecclesiastical authorities and for them alone to decide as to the validity of any objection founded on alleged non-compliance with it.

In connection with this point it will not be out of place to observe that the articles relating to the civil erection of parishes form the subject of a separate and distinct sub-section. The first article in that sub-section in its opening words speaks of "Every Decree for the canonical erection of a new Parish." The words are general. There is nothing referring them back to what has gone before, or confining the case to a decree made in the manner prescribed by the preceding sub-section. It seems to their Lordships therefore that according to the grammatical construction of the language of this sub-section, as well as according to the good sense of the matter, every decree for the canonical erection of a new parish which is valid according to ecclesiastical law is a sufficient foundation for proceedings with the view of obtaining civil recognition. Otherwise a canonical decree, valid according to ecclesiastical law but having the defect or flaw which the Appellants attribute to the Archbishop's decree in this case, would for all time be a bar to civil recognition. For there are no means of curing this defect or getting rid of the difficulty.

Their Lordships have dealt with this matter because it is of general interest and it formed the principal subject of the arguments addressed to them. At the same time they desire to say that they see no reason to differ from the conclusion of the learned Judges of the Court of Queen's Bench, who have held that proceedings before the Commissioners, in accordance with the statutory provisions relating thereto, with a view to the civil recognition of a new parish are not subject to the review or control of a Court of Justice. The functions of the Commissioners in this respect are simply to inquire and report to the executive Government, and although they are empowered to dismiss an opposition

made to the civil recognition of a canonical decree they are required to report the dismissal to the Lieutenant-Governor when they transmit the canonical decree to him. Persons who may consider themselves aggrieved by the dismissal of their opposition are not without remedy. But their remedy is not to be sought in a Court of Law. It appears from the judgment of Wurtele J., as well as from Mr. Justice Baudry's Treatise (page 51) that it is the practice for the executive Government before granting civil recognition to listen to all remonstrances and objections properly brought before them. "In all such cases," says Wurtele J. "the parties are always heard and the circumstances are carefully considered before any action is taken." "It is within my own knowledge" he adds "that on several occasions after having considered the objections made to the civil erection the Lieutenant-Governor on the advice of the Executive Council has declined to issue the Proclamation and to give civil effect to a Canonical Decree."

The objection founded on the alleged debt of the Parish of St. Jean l'Evangeliste is a more serious objection in a legal point of view. For Article 3380 provides that nothing in the chapter 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. In the present case however the alleged debt is not a debt of the parish. It was not contracted by the parish. It was contracted by the *Fabrique* and the *Fabrique* apparently has sufficient means to discharge the debt, or so much of it as remains unpaid, by the stipulated instalments, without throwing any part of it upon the parish. A debt of the *Fabrique* may no doubt become a debt of the parish. But to bring about that result two things must concur. In

the first place the *Fabrique* must ascertain the impossibility of paying the debt by means of the revenues at its disposal ; and in the next place it must obtain an authorization for a levy upon the Roman Catholic freeholders of the parish at a meeting of the parish regularly called.

For these reasons their Lordships are of opinion that the appeal wholly fails, and they will humbly advise Her Majesty that it ought to be dismissed.

The Appellants will pay the costs of the appeal.

