

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of The Quebec Improvement Company v. The Quebec Bridge and Railway Company; and of The Quebec Improvement Company v. The Quebec Bridge and Railway Company, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 24th January 1908.*

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Present at the Hearing:

LORD MACNAGHTEN.

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

These are Appeals from the Court of King's Bench, Lower Canada.

The Appellants, the Quebec Improvement Company, were the owners of three lots or pieces of land, in the immediate neighbourhood of Quebec, which the Quebec Bridge and Railway Company required for the purposes of their undertaking. The parties were unable to agree as to the price, and the matter was referred to arbitration. The result was an award which the Railway Company impeached by an action at law, and the Improvement Company in a separate action sought to enforce. The Superior Court decided both actions in favour of the Appellants. The Court of King's Bench reversed both judgments and dismissed the Appellants' action with costs. The Improvement Company appealed in both cases to His Majesty in Council. The Appeals were consolidated and now come before this Board for final decision.

The only question at issue is the validity of the award. For the determination of that question it will be sufficient to state the effect of the award and the purport of the submission to arbitration or deed of compromise as varied slightly by a subsequent deed.

The submission is dated the 24th of March 1905. It begins with a recital to the effect that the Railway Company, for the purposes of the construction of its railway, was obliged to expropriate the three lots of ground described in the deed and delineated on the plan annexed. It proceeds to state that the Improvement Company, wishing to avoid the delay of judicial proceedings, had proposed to refer the valuation of the said lots of ground and the indemnity for the damages to the decision of arbitrators, and that the friendly arbitration so proposed had been accepted by the Railway Company. Then each party names an arbitrator with power for the two arbitrators to choose a third. The submission ends by declaring that the three arbitrators should be bound and obliged strictly to conform themselves to the provisions of the Railway Act of Canada relating to the expropriation of lots of ground in similar cases, and that their decision should be final and without appeal and binding for all parties.

A third arbitrator was appointed by the two arbitrators named in the submission, and on the 29th of June 1905 the deed of the 24th of March 1905 was modified by a deed of that date, which declared that the arbitrators should act as mediators (*amiables compositeurs*), but that they should be bound to conform to the provisions of Article 161 of the Railway Act, 1903. It was also declared that the parties renounced the ordinary procedure of a judicial arbitration, such as the production of witnesses, the employment of advocates and other judicial formalities,

reserving the right to produce documents before the arbitrators.

On the 12th of July 1905 two of the arbitrators made the award which is now impeached. The arbitrator named by the Railway Company did not concur.

So far as regards two of the three lots of ground, the award does not appear to be open to objection. As regards the third lot, the award is to the following effect:—

Messrs. Tanguay and Sirois, forming the majority of the arbitrators (Mr. McCarthy not concurring), declare that the Railway Company should (as its arbitrator and its representatives declared that it ought to do)—

1. Restore to the Improvement Company, after the construction of the railway and the bridge, in good order that part of the land containing an acre and eighty-four hundredths of an acre marked on the plan as "Temporary line to burrow pit."

2. Establish on their land on the east side to the place marked on the plan for the benefit and advantage of the Improvement Company the road marked as "Concession Road," and containing forty-four hundredths (0.44) of an acre to the end that the Improvement Company may have access by the road on foot and by carriage for all time and in perpetuity from that part of their property lying to the east of the railway to the public road.

On the 5th of October 1906 the Court of King's Bench delivered judgment in favour of the Railway Company on the ground that the award went beyond the powers conferred on the arbitrators in that (1) it awarded (in lieu of valuing in money the third lot of land) that the Railway Company should, after the construction of the line of railway and the bridge, be bound to restore it in good order to the Improvement Company, and (2) that it imposed a servitude of way in perpetuity over the land of the Railway Company, and that the award was, therefore, void *in toto* and illegal.

Their Lordships see no reason to differ from the Judgment of the Court of King's Bench. As regards the third lot of ground, it is obvious that the arbitrators have not followed or attempted to follow the directions contained in the submission or deed of compromise. Arbitrators who are also appointed mediators are not obliged to adhere to legal formalities—mere irregularities are excusable—but they cannot disregard the instructions given them in the deed under which they purport to act.

The suggestion which appears on the face of the award that the order of the arbitrators does no more than carry out the intentions of the Railway Company, as expressed by their own arbitrator and their duly authorised representatives, is not supported by the evidence to which their Lordships' attention was called. Nor is there, in their Lordships' opinion, any substance in the argument founded on certain words appearing on the plan annexed to the submission. Those words are merely words of description, and it is quite clear that they were not placed on the plan for any purpose connected with the arbitration.

Their Lordships agree with the Court of King's Bench in thinking that the error which the arbitrators have committed vitiates the whole award.

Their Lordships will, therefore, humbly advise His Majesty that these Appeals should be dismissed.

The Appellants will pay the costs of the Appeals.

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