

1920

*Mar. 5
*Apr. 6.

ANDREW H. D. BREAKEY AND
OTHERS (PLAINTIFFS) APPELLANTS;

AND

THE CORPORATION OF MET-
GERMETTE-NORD (DEFEN-
DANT). RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.

*Appeal—Jurisdiction—Title to land—Future rights—Timber limits—
Valuation roll.*

In an action to set aside a valuation roll, the appellants alleged that as to some of the properties assessed they owned neither the soil nor the right to cut timber, and as to the others, owning merely the right to cut timber, they complained that the corporation had undertaken to value the right to cut timber separately from the soil and to assess them as owners of such right.

Held, Idington J. dissenting, that there is jurisdiction in the Supreme Court of Canada to entertain the appeal. The right to cut timber is an immovable right and rights in future in respect thereto are involved.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court and dismissing the appellant's action to set aside a valuation roll of the corporation respondent.

The material facts of the case are fully stated in the reasons for judgment of the Registrar of this court on a motion to affirm jurisdiction, which motion was granted.

*PRESENT:—Idington, Duff, Anglin, Brodeur and Mignault JJ

THE REGISTRAR.—This a motion to affirm jurisdiction. The facts shortly are as follows:—

An action was brought by Andrew H. D. Breakey *et al.* against the corporation of Metgermette-Nord in which the plaintiffs alleged:

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1. Les demandeurs sont contribuables de la corporation défenderesse, portés au rôle d'évaluation comme propriétaires de bien-fonds imposables, pour une valeur considérable, et sont les plus grands propriétaires fonciers de la corporation défenderesse, sans tenir compte des biens-fonds ci-dessus mentionnés, et sont spécialement intéressés dans les affaires municipales de la défenderesse et spécialement dans le rôle d'évaluation en vigueur.

2. La corporation défenderesse a actuellement un rôle d'évaluation sur lequel elle se base pour faire ses répartitions pour taxes municipales et qui sert à la répartition des taxes imposées par la corporation scolaire du même endroit;

3. Au mois de juillet dernier, les estimateurs de la corporation défenderesse préparèrent un rôle, qui fut homologué au mois de septembre suivant et qui sera produit, en vertu duquel rôle la corporation défenderesse a taxé et imposé et a mis susceptible d'être taxés et imposés et a mentionné sur le dit rôle, comme appartenant aux demandeurs en propriété, les lots suivants, savoir:

Rang 2, lots 17 et 18; rang 2, lot 25; rang 2, lot 33; rang 2, lot 34; rang 2, lot 35; rang 3, lot 16; rang 3, lot 58; rang 5, lot 1; rang 5, lot 2; rang 5, lots 8 et 9; rang 6, lot 5; rang 6, lot 6; rang 6, lot 7, rang 6, lot 8; rang 6, lot 10; rang 6, lot 9; rang 7, lot 9; rang 7, lot 29; rang 7, lot 33;

4. Les demandeurs n'ont rien à faire sur ces lots 17 et 18 du rang 2, n'étant pas propriétaires, ni du fonds, ni de la coupe du bois.

5. Les demandeurs ne sont pas propriétaires des lots 33 et 34 du rang 2, ni du fonds, ni de la coupe du bois.

6. Les demandeurs ne sont pas propriétaires du lot 25, rang 2, n'ayant qu'un droit de flotter le bois.

7. Les demandeurs ne possèdent qu'un demi-acre, comme propriétaires sur la partie nord-est du lot 35, rang 2, dont la coupe sur la balance.

8. Les demandeurs n'ont rien à faire avec le lot 33 du rang 7, n'ayant ni la coupe ni le fonds.

9. Quant aux autres lots ci-dessus désignés, les demandeurs ne sont propriétaires que de la coupe de bois.

10. Les demandeurs n'ont aucun droit de possession, ni d'occupation, et n'ont rien à faire sur ces lots qui leur sont complètement étrangers, à part ce que ci-dessus mentionné.

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11. La défenderesse prétend que les demandeurs sont propriétaires de la coupe de bois qui existe sur ces lots et elle a porté ces différents lots au rôle d'évaluation, prétendant avoir le droit d'évaluer les coupes de bois, séparément du fonds, de considérer immeubles, au point de vue municipal, les susdits lots, en vue de taxer les demandeurs comme propriétaires de ces coupes de bois.

12. En portant les demandeurs comme propriétaires de ces lots au rôle d'évaluation, sachant que les demandeurs ne l'étaient pas, mais pensant avoir le droit de taxer et d'évaluer, au rôle d'évaluation, des coupes de bois séparément des fonds, la défenderesse a agi illégalement sans droit et excédant ses pouvoirs.

To this the defendant pleaded:

1. Ignore le paragraphe 1, la défenderesse déclarant s'en tenir au rôle d'évaluation.

2. Admet le paragraphe 2.

3. La paragraphe 3 est nié, sauf quant à l'existence et la légalité du rôle.

4. Ignore les déclarations mentionnées au dernier paragraphe du paragraphe 3, et les paragraphes 4-5-6-7-8-9-10.

5. Nie les paragraphes 11 et 12 de l'action.

6. Aucune plainte n'a été portée par les demandeurs lors de l'homologation du rôle; les demandeurs sont des absents qui n'ont nommé personne dans la municipalité défenderesse et ni les évaluateurs ni la défenderesse ne peuvent se renseigner auprès d'eux dans la préparation de leur rôle.

The motion was argued before me on the basis that the question to be decided was whether or not a right to cut wood upon lands in the Province of Quebec had the effect of making the person having the privilege the owner of an immovable and therefore liable to be placed on the valuation roll as such owner; it would seem to me, however, that as to certain lots the plaintiffs distinctly allege that they have been placed upon the roll where they have not even a right to cut timber (see paragraphs 4, 5, 6), and as the plea neither admits nor denies these allegations, it would appear to me that we have here a distinct issue raised as to the title to these lots and the court has jurisdiction by virtue of sec. 46 (b) of the Supreme Court Act.

But dealing with the matter on the basis of the arguments of counsel, the question for determination then is: Does the issue involve any title to lands or tenements, annual rents or other matters or things where rights in future might be bound?

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A determination of this requires that certain articles of the codes should be construed. Art. 16, subarticle 27 of the Municipal Code reads as follows:

The words "land" or "immovable" or "immovable property" mean all lands or parcels of land in a municipality, owned or occupied by one person or by several persons jointly, and include the buildings and improvements thereon.

Art. 649, Title XXII and following, of the Municipal Code, provide for the duties of the assessors in preparing their valuation rolls and amongst other things they are told that all immovable property is taxable property with some exceptions not of moment here. They are also told they must draw up the valuation roll setting out the particulars required by title XXII of the Municipal Code.

By Art. 654 of title XXII the assessors are directed to enter on the valuation roll in separate columns, amongst other things, the real value of every taxable immovable or part of an immovable and 6th, the name and surname of the owner of every immovable or part of immovable, if known. It is further provided in the same title that after the roll is prepared, it is to be deposited in the office of the corporation, certain notices must be given, and after complaints have been adjusted, the roll becomes homologated.

Title XXIII of the Municipal Code provides for the imposition of taxes based upon the taxable property as set out in the valuation roll. The Municipal Code

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also contains provisions for appeal, but the law is well established that where the complaint is that the municipal authority has exceeded its powers and its act is therefore *ultra vires*, a person complaining on this ground is not precluded from taking proceedings in the Superior Court to obtain redress.

The defendants rely upon the interpretation of immovables as defined in Art. 381 of the Civil Code as amended by 2 Geo. V. ch. 45 which reads as follows:—

381. Rights of emphyteusis, of usufruct of immovable things, of use and habitation, the right to cut timber perpetually or for a limited time, servitudes and rights or actions which tend to obtain possession of an immovable, are immovable by reason of the objects to which they are attached.

It may well be that the interpretation they place upon immovable is correct and includes the right to cut timber in the present instance, but that is a question of the merits of the appeal. What I have to determine is: Is there jurisdiction in the Supreme Court to hear the appeal? Or in other words: Does the matter in controversy in the appeal involve matters or things *ejusdem generis* with titles to lands where rights in future may be bound?

I am of the opinion that it does. *Gilbert v. Gilman*, (1); *Foster v. St. Joseph* (2). Counsel for the defendants claims that the action is premature and that the valuation roll has no such finality as would warrant an action to have it annulled, but it appears to me clear from the terms of the Municipal Code that the preparation of the valuation roll is a necessary part of the machinery by which the rates are imposed upon the owners of immovable property and I do not see why

(1) 16 Can. S.C.R. 189.

(2) Cam. Pract. Vol. 2, 183.

it cannot be attacked after homologation, which the declaration alleges to have taken place, as readily as later on when all proceedings have been completed and the municipal council proceeds to fix the rate to be imposed upon the property included in the valuation roll.

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The plaintiff relies upon the jurisprudence of the court particularly *Stevenson v. City of Montreal* (1). The facts of that case are not on all fours with the present but the difference I do not think is material. The fact that in the *Stevenson Case* (1) a by-law was passed for the widening of a street and the valuation roll was based upon the by-law, does not, I think, give the valuation roll any higher standing than the roll which has to be prepared under the provisions of the municipal code.

I am of the opinion therefore, as I have said, that the Supreme Court of Canada has jurisdiction to hear the appeal. If I am wrong in my conclusions, the defendant is not precluded by my order from moving later on to quash the appeal for want of jurisdiction as nothing I do can have the effect of conferring jurisdiction upon the court if otherwise it has none. The application is granted, costs in the cause.

See—*Canadian Pacific Railway Co. v. Rat Portage Lumber Co.* (2). *Glenwood Lumber Co. v. Phillips* (3). *McPherson v. Temiskaming Lumber Co.* (4).

E. R. CAMERON,

January 16th, 1920.

Registrar.

Romeo Langlais K.C. for the motion to quash.

Louis St. Laurent K.C., contra.

(1) 27 Can. S.C.R. 187.

(3) [1904] A.C. 405.

(2) 10 Ont. L.R. 273.

(4) [1913] A.C. 145; 18 Ont.W.R. 319.

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Idington J.

IDINGTON J (dissenting)—The basis of assessment in Quebec distinguishes between real and personal property. The Court of King's Bench has decided that appellants' title, which is admitted and, as such, is no way in dispute, gives him a property of which the quality is such that it must be classified as real property and hence liable to be assessed as such.

The resultant tax, it is admitted, cannot by any possibility reach the sum of two thousand dollars. Hence that basis for an appeal here fails.

Nor can the provision of subsec. (b) of section 46 of the Supreme Court Act, which reads as follows:

(b) relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty, or to any title to lands or tenements, annual rents and other matters or things where rights in future might be bound,

be relied on.

So long as the title, as such, is beyond dispute, the question of the quality of property which is held thereby does not, in my opinion, fall within the meaning of this subsection.

I, therefore, think the motion to quash should be allowed with costs.

DUFF J. concurs in dismissing the motion with costs.

ANGLIN J.—I concur with Mr. Justice Mignault.

BRODEUR J.—I concur with Mr. Justice Mignault.

MIGNAULT J. The appellants seek to have a valuation roll of the respondent set aside as to a large number of properties which are entered in the roll as belonging to the appellants and subject to being assessed against them for municipal and school taxes, and allege that as to some of these properties they own

neither the soil, nor the right to cut timber, and as to others they own merely the right to cut timber. They further complain that the respondents have undertaken to value the right to cut timber separately from the soil and to assess the appellants as owners of such right.

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Mignault J.

The appellant's action was maintained by the Superior Court but dismissed by the Court of King's Bench, and the appellants appeal to this court. They succeeded in having the jurisdiction of this court affirmed by the Registrar and the respondent now moves to have the appeal quashed for want of jurisdiction.

I am of opinion that we have jurisdiction. As to some of the properties mentioned in the declaration, the issue is whether the appellants own either the soil or the right to cut timber thereon, and this raises a question as to the title of these properties. As to the others, the issue is whether the appellants can be assessed in respect of the right to cut timber independently of the right of ownership in the soil. The right to cut timber perpetually or for a limited time is an immovable right (Art. 381 C.C.). Future rights of the appellants in respect of this immovable right and its being subject to assessment are therefore involved.

The motion to quash should be dismissed with costs.

Motion dismissed with costs.
