

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Municipal Council of Shanghai v. McMurray, from the Supreme Court for China and Japan; delivered 17th February 1900.

Present at the Hearing :

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Appellants commenced the present suit for the purpose of enforcing their right to take a portion of the Respondent's land for a public road. The land in question was rented or acquired by a Mr. Bollard from the native owner on the 28th October 1896, and it was subsequently transferred to the Respondent. He maintains, first that the Regulations in force do not empower the Appellants to take his land against his will; and secondly, that they have not performed the conditions required for putting the Regulations in force against him.

The Regulations were made in the year 1869 and they have the force of law in Shanghai. Regulation VI. so far as it affects the present case runs as follows :—

“ It is understood and agreed that land heretofore surrendered by the various foreign renters to public use, such as roads and the beach grounds of the rivers within the aforesaid limits, shall remain henceforth dedicated to the same uses, and as new lots are acquired, such parts thereof as are beach ground shall be held under and subject to similar

“ uses, and due provision shall be made for the extension of
 “ the lines of roads at present laid down as means of com-
 “ munication in the Settlement. To this end the Council
 “ appointed by the land renters and others entitled to vote on
 “ the terms and in the manner hereinafter mentioned within
 “ the boundaries referred to, will at the beginning of each
 “ year examine the map and determine what new lines of
 “ road are necessary, and all land subsequently rented shall
 “ only be rented on the terms of the renter surrendering to
 “ the public use the beach ground aforesaid, if any, and the
 “ land required for such roads, and in no case shall land so
 “ surrendered, or which shall now be dedicated to the use of
 “ the public, be resumed, except with the consent of the proper
 “ majority of land renters and others who may be entitled to
 “ vote as aforesaid in the public meeting assembled, nor shall
 “ any act of ownership be exercised over the same by the
 “ renters thereof, notwithstanding any payment by them to the
 “ Chinese Government of any ground rent. Provided always
 “ that no act of appropriation or dedication for public uses
 “ of the said beach ground, or of ground for roads other than
 “ those already defined, shall contrary to the will of the renters
 “ thereof in any case be sanctioned or held lawful under these
 “ Regulations.”

The cause was tried before the Chief Justice of the Supreme Court. He addressed himself to the objection that the road is not one of those to the making of which the Respondent's land is made subject by the Regulation, because it does not continue one of the old lines in the same direction but branches off from it laterally. This objection appeared to the learned Judge to be valid.

His reasoning is to the following effect. He holds, first that the power given to the Council to determine annually what new lines of road are necessary, is limited by the words “ to this end,” viz. that “ due provision shall be made for the extension of the lines of roads at present laid down ”: secondly that the word “ extension ” can only mean enlargement of an existing road by adding to its length or its breadth; thirdly, that the words in the second sentence which provide for new lines of road cannot be reconciled with those of the first, which provide for extensions; and fourthly, that

the former and narrower expression limits the later and wider one. On this ground he dismissed the suit with costs: and from that decree the Council appeal.

It may well be doubted whether in point of fact this road is not an "extension," even within the narrow meaning affixed to that word by the Court below. And again it may well be doubted, whether, even if there be a conflict of expression, the power to determine new lines of road, which is calculated to serve the object of securing sufficient communications for a new and growing settlement, should not rather interpret and enlarge the word "extension" than be restricted by it. But their Lordships do not enter more minutely into these considerations because they think that there is no such conflict of expression as appeared to the Court below.

The word "extension" is very commonly used in connection with railways and tramways, both in legal documents and by people at large. When an extension of the Great Western Railway is spoken of no one supposes that the thing meant is merely to prolong the existing line or to increase its breadth for laying down more rails. Branches are contemplated as well as the original main line when extensions are spoken of. That is certainly a common use of language; nor can their Lordships see that in point of etymology or philology it is incorrect.

The whole expression is "extension of the lines of roads at present laid down as means of communication in the settlement." The words combined with extension certainly do not tend to give it less than its ordinary meaning. They point to enlarged means of traffic in the settlement, and it is only by an artificial strain upon the words that the contemplated provision can be confined to particular directions of roads existing at the date of the Regulation; and a

strain, it may be added, which does not promote but defeats the main object.

The unhappily expressed proviso at the end of that part of the Regulation which has been set out above, was the subject of remarks in the case of *Inch v. Thorburn* 11 App. Ca. 185. Lord Blackburn pointed out that if roads already defined meant roads then marked out on the map, as the Respondent contends, all the preceding provisions would be nullified. It was not necessary in that case, which related to the preservation of beach lands from building, to construe the proviso with exactitude. Nor has it been necessary for the Supreme Court to construe it in this case. It must be construed now; and ill-drawn as the Regulation is, their Lordships do not after the careful sifting which it has received during the argument, feel any serious difficulty about it. They hold that the roads "already defined" are the roads mentioned in the whole of the preceding part of the Regulation, including the extensions or authorised new roads for which express and specific provisions had been made. The proviso so read protects the renters from expropriation by any other method than that prescribed to their own elected Council, and it does no more.

It remains to see whether the Council has complied with the conditions necessary for lawful expropriation. That point also it was not necessary for the Court below to decide. The Regulation requires that at the beginning of the year the Council shall examine the map and determine what new lines of road are necessary. All lands subsequently rented are made subject to the demands for such roads. It appears from the evidence of Mayne the engineer of the Council and of Godfrey their Secretary, that a plan was made in 1893 and extensions marked on it with red colour in

1894. Exhibit D is an enlarged copy of that plan. The red colour includes the Respondent's land. It was approved by the Council and hung up in the Board Room; and copies were sent to the several Consulates and a notification was advertised. The map hung in the Board Room remained there. No alteration was made in it till the year 1898. The notification of January 1898 says that the plan of 1894 holds good. On this evidence their Lordships are of opinion that the Council have taken the prescribed steps and that they have also taken care to make their intentions known to renters; and that this was done before Bollard's acquisition of the land in 1896.

The Appellants ask for the surrender of the land, and the removal of obstructions and the costs of suit. They are entitled to that relief. Their Lordships will humbly advise Her Majesty to discharge the order appealed from and instead thereof to make an order according to the prayer of the Appellant's application to the Supreme Court. The Respondent must pay the costs of this Appeal.
