

Alexandre Michaud - - - - - *Appellant*

*v.*

The City of Montreal - - - - - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.  
(APPEAL SIDE).

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 30TH APRIL, 1923.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD PARMOOR.

LORD PHILLIMORE.

LORD CARSON.

[*Delivered by* THE LORD CHANCELLOR.]

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This is an appeal from a judgment of the Court of King's Bench for the Province of Quebec on its appeal side, affirming a judgment of the Superior Court of the district of Montreal, which dismissed the plaintiff's action.

The claim of the appellant in these proceedings is to have possession of a strip of land, formerly part of his property, of which the City of Maisonneuve, to whose rights and obligations the City of Montreal has succeeded, took possession, and which it threw into the public highway. The appellant admits that he agreed to give this strip of land to the City of Maisonneuve without payment, but he says that he did so only on condition that the three adjoining owners did the same, and that that condition has not been fulfilled. He also says that the gift was ineffective, because it was not carried out by a notarial act.

There are concurrent findings of both the Quebec Courts against the appellant, and therefore it is sufficient to state the facts quite shortly. There were negotiations for the ceding by four adjoining owners (the appellant and three others) of 10 feet of land on each side of the road in question which is now called Morgan Avenue. It is plain that the appellant verbally agreed to make over the 10 feet on each side in front of his own property. On the 27th June, 1913, M. Ecrément, the Secretary and Treasurer of the City of Maisonneuve, wrote to the appellant enclosing a draft undertaking to make over this 10 feet and asking him to sign and return it. The undertaking purported to be upon the condition that the other proprietors should also cede to the city a strip of land of the same width, so that Morgan Avenue might be of equal width throughout. The appellant signed and returned an undertaking, but he says that the undertaking as signed by him did not entirely comply with the draft which had been sent to him, but contained a condition which he describes in this way: "I said in my letter that I should be ready to give up this strip of land on condition that the others should equally give up gratuitously to the town, and that I would sign an undertaking to that effect as soon as the others should have signed." Unfortunately that letter from the appellant has been lost, and one has to rely upon oral evidence as to its contents. Whether the additional words referred to by the appellant were in the undertaking is not clear, but what is clear is that shortly afterwards, namely, in the year 1913 the City of Maisonneuve took possession of this strip of land and proceeded to throw it into the public way, to pave it, and otherwise to fit it for the public use. It is equally clear, and indeed it is admitted, that during that time the appellant was himself Mayor of the City, and made no objection, and gave no warning to the City that they were spending money upon ground which he had not yet effectively agreed to cede to them.

On the 7th October, 1914, there was a meeting of the Council of the City at which the appellant presided as Mayor; and a minute has been produced showing that a draft deed of gift by M. Michaud, the appellant, to the City of Maisonneuve of this strip of land was produced and read to the Council, and that a resolution was passed that the offer of the gift of this land should be accepted, and that the draft deed of gift should be approved, and should be executed by M. Ecrément on behalf of the City. Nothing is said in the minute as to any condition being then imposed or asserted by the appellant. From that time onwards the work went on, and throughout the remainder of the year 1914 and until early in 1915 the City continued to spend their money upon the road upon the footing that the strip of land had been effectively given up to the City; and during that time again the appellant, the Mayor of the City, who must have known what was going on and must have known that the City were spending their money in the belief that the land was theirs, made no objection

and gave no warning. The natural inference from these proceedings is that, if the appellant ever made the additional condition which he has deposed to, he had by that time agreed to waive it, and was content that the City should accept and take over his gift and throw the strip of land into the road. The draft deed was submitted to the appellant for execution. He read it, or at all events looked at it, and initialled it; but he did not execute it at that time, the reason which he gives being that he was still maintaining his condition, but the reason which M. Ecrément says he gave being that he said he would sign it as soon as he had made out his title. On the 19th January, 1915, M. Ecrément wrote to the appellant asking him to bring down his title deeds in order that the donation might be completed. No reply was sent to that letter, but on the 19th March, within a few months after that letter, the appellant issued his writ against the City, claiming possession of his land or in the alternative payment of its value.

It is only necessary to add that of the three adjoining owners, two, namely, the Church of Saint Cyprian and Mr. Morgan, made actual deeds of gift of the strips of land in front of their properties. The third, M. Dubois, made no deed of gift, but he afterwards transferred his land to Mr. Morgan, and Mr. Morgan has never claimed possession of the strip of land so far as it lay in front of that property.

These being the facts, what is the true inference to be drawn from them? It appears to their Lordships that the principle to be applied is that which has been applied in many cases, including the well known case of *Laird v. Birkenhead Railway Company* (Johns. 500), and the not less well-known judgment of the House of Lords in *Ramsden v. Dyson* (L.R. 1 H.L. 129). It is only necessary to read the first sentence from the head note of the last-mentioned case: "If a stranger begins to build on land supposing it to be his own, and the real owner perceiving his mistake abstains from setting him right but leaves him to persevere in his error, a Court of equity will not afterwards allow the real owner to assert his title to the land." That principle appears exactly to apply in this case. The appellant, the Mayor of the City, offered to give this land; his gift was accepted; the City took possession, spent money on the land, believing it to be theirs; and the appellant, although he must have perceived their mistake, abstained from setting them right and left them to persevere in their belief and to spend their money upon the property. In those circumstances a Court of equity, either in this country or in the Dominion of Canada, will not permit a man afterwards to assert his title to the land in question; in short, he is estopped from doing so. It is true that the City after taking possession attempted to obtain a formal conveyance of the land; but it is plain that that was done only for the purpose of having an authentic record of the transaction, and the attempt cannot affect the right which they had

already acquired in consequence of the conduct pursued by the appellant.

A point was made by the learned Counsel for the appellant based on the formalities required for the exercise of the compulsory powers to take land given by the Statute Law ; but those formalities cannot be applicable to a case like the present, where there was no compulsory taking, but a gift of the land. There is nothing in the statute to prevent a municipal corporation from taking advantage of a voluntary gift or from relying on the law of estoppel.

For these reasons it appears to their Lordships that this appeal fails, and they will humbly advise His Majesty that it should be dismissed with costs.



In the Privy Council.

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ALEXANDRE MICHAUD

o.

THE CITY OF MONTREAL.

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DELIVERED BY THE LORD CHANCELLOR.

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