

IN THE MATTER OF THE PETITION OF RIGHT OF

1917
Jan. 29

J. ALPHONSE LEFEBVRE.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Contract—Sale of land—Option—Third party—Privity.

Wherein a deed of sale of certain lands and property that had previously been under option, and where there was in the mind of some of the interested parties doubt as to whether or not all the rights under their option had actually lapsed and come to an end, a clause was inserted in the deed of sale, as between the Crown and its vendors, whereby the former would not hold their vendors responsible for any trouble which might arise from the said option.

Held, that the clause only established a recourse against the Crown on behalf of the vendors alone, and did not establish any privity of contract as between the Crown and third parties or the bearer of the said option.

PETITION OF RIGHT to recover compensation under an option, with respect to certain land taken by His Majesty, for the construction of a barrier or dam on the River St. Charles, P.Q.

The case came on for hearing before the Honourable Mr. JUSTICE AUDETTE, at Quebec, on April 25, 26 and 27, and Sept 11, 1916.

G. A. Marsan and Armand Lavergne, for suppliant; *A. Bernier, K.C.*, and *Joseph Bedard*, for respondent.

AUDETTE, J. (January 29, 1917), delivered judgment.

After a brief statement of the case had been made by counsel at the opening of the trial at bar, I ordered, and the parties agreed thereto, that the case be then proceeded with only upon the hearing of the questions of law and all the questions raised by the written pleadings herein—leaving out for the present the consideration of the question of the value of the property in question herein and of the *quantum* which might finally be ordered to be paid to either party. In other words that the questions of law

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were to be disposed of before venturing upon the questions of value and compensation.

In the course of the months of April and July, 1912, the owners of the lands in question in this case consented and gave several options to different persons at prices and conditions therein mentioned.

On October, 7, 1912, a deed of agreement (acte d'accord—Exhibit No. 21) was entered into between the owners of the lands in question and the parties holding the options; however, the suppliant contends he is not affected by this deed, as the mandate given by him to his solicitor, before leaving for a long absence; to sign a deed of agreement on his behalf did not purport to be the deed as entered into and perfected. However, in this respect it is well to note that the suppliant is not claiming under the option given to himself personally in his name; but that he is claiming under the option given in the name of Roch *who* signed such agreement unconditionally.

It may also be mentioned that this mutation of property or these options were entered into in view of a prospected expropriation by the Crown of the property in question as part of its public works now under construction in the River St. Charles at Quebec. The evidence discloses it was talked of at the time of the negotiations or obtaining the options.

Following all expectations, on January 13, 1913, the Crown, as representing the Government of Canada, expropriated the lands in question by depositing a plan and description of the same in the registry office of the Registration Division of Quebec and from that day on the property was vested in the Crown.

Subsequent to this expropriation, the Crown having failed to make any tender or offer for the said lands so taken, a fiat for a petition of right was granted the owners whereby they claimed the value of the said lands. However, in view of arriving at a settlement between such owners and the Crown without any litigation, on the 27th day of June, 1914, the parties came together and entered into an agreement which appears in the deed of sale of that date and filed herein as Exhibit No. 31. This deed, after reciting the chain of facts leading to the *habendum* clause

fixing the price, contains the following clause, upon which the present action rests. The clause reads as follows:—

“The Government of Canada will not hold the vendors responsible for any trouble which may arise in connection with the said immovable properties by reason of the covenants entered into by them as they appear in a certain notarial deed of October of the seventeenth, nineteen hundred and twelve, before Joseph Sirois, Notary of Quebec (copy of which is delivered to the Government) with the said Messrs. F. A. Roch, J. F. Lacasse, J. A. Leblanc, and Alleyn Taschereau, and from the following options or covenants prior to the said notarial deed, viz.:—

“(a) Option by Alexandre Gauvreau to Alleyn Taschereau and Alphonse Lefebvre, dated April 4, 1912, before Yves Montreuil, Notary at Quebec;

“(b) Option by Alleyn Taschereau and Alphonse Lefebvre to J. F. Lacasse and J. A. Leblanc, dated April 4, 1912, before Yves Montreuil, Notary at Quebec;

“(c) Option by Alexandre Gauvreau to J. F. Lacasse and J. A. Leblanc, dated April 12, 1912;

“(d) Option by Alexandre Gauvreau to F. A. Roch dated July 18, 1912; or

“(e) From an alleged option from Alexandre Gauvreau to J. A. Lefebvre, dated April 11, 1912.”

Subsequently thereto, namely on September 15, 1914, the suppliant took out an action in the Superior Court of the District of Quebec against the owners of the land in question for the same amount, viz.: \$664,985.40, the pleadings in that case covering, *inter alia*, the same grounds of the present cause of action. The action in the Provincial Court was settled under a notarial agreement bearing date October 20, 1916, and is filed herein as Exhibit No. 77, to which effect was given under a judgment obtained in that court under a discontinuance of suit by the plaintiff Lefebvre and the action, pursuant to the said discontinuance, was dismissed, each party paying his own costs. Art. 275 to 278, C.C.P. (Que.).

While this case may appear to be involved in numerous and intricate facts, in the view I take of the same, it becomes unnecessary to delve into the details of this long catena of facts respecting each option and the general

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circumstances bearing upon them all, since the action obviously *in limine* rests upon the paramount question as to whether or not there is, under the circumstances of the case, any privity of contract as between the suppliant and the Crown.

And since that question must be answered in the negative, it becomes unnecessary to enter into the consideration: 1. Of the value and effect of an option and as to whether or not the options in question herein have lapsed; 2. As to the value of an option given by a fictitious person who never existed. And, indeed, while the primary duty of the Court is to administer the laws of the State, it will always be loath to extend the strong arms of law or equity, as one of the old chancellors said, in aid of persons trafficking in options obtained under false and fictitious names and persons. 3. As to whether or not Lefebvre, the suppliant, is bound by the acte d'accord of October 7, 1912, signed by Roch and Lacasse, under whom he really claims. Did not the holders of these options, by this deed, renounce all rights attached thereto? The owners of the land were also parties to that deed. If the suppliant claims, as he does, under the option given in favour of Roch or Lacasse who have renounced all their rights therein and declared, under the acte d'accord, the options void, how can there be a right of action still extant so long as that deed is in full force and effect as between the owners of the land and Roch and Lacasse? 4. As to whether or not there was multiplicity of action in taking out a suit against the Crown in this court and against the owners of the land in the Provincial Court for, *inter alia*, one and the same amount and cause of action, and further whether the settlement of the provincial suit is not for all practical purposes a settlement of the present action?

The suppliant relies upon the clause above recited in Exhibit No. 31 (the deed of June 27, 1914), to endeavour establishing a legal obligation as between himself and the Crown. There is no foundation for such a contention. The deed of sale is one in the result, without covenant on behalf of the vendors. The vendors sell without covenant or warranty and the vendee covenant not to hold the ven-

dors responsible for any trouble, etc., as mentioned in the deed.

It is obviously clear that an agreement entered into between two persons cannot, in general, affect the rights of a third party who is a stranger to it. This deed, Exhibit No. 31, is a contract between the vendor and the vendee and the suppliant, relying upon this deed to establish privity as between himself and the Crown, must fail. This deed has effect only between the parties to the same. There is no privity of contract between the Crown and the suppliant as resulting from this deed Exhibit No. 31. No contractual relationship, no relation as between the Crown and the suppliant.

Furthermore one cannot overlook the very important fact that the suppliant claims under the option of Roch or Lacasse, and that the latter in the deed of October 7, 1912, as between the owners of the land and themselves, declared these options null and as if they had never existed. He would therefore appear to be estopped from invoking any right flowing from the option of Roch or Lacasse.

Under the circumstances, there will be judgment declaring that the suppliant is not entitled to any portion of the relief sought by his petition of right, which stands dismissed with costs.

Petition dismissed.

Solicitors for suppliant: *Marsan & David.*

Solicitor for respondent: *E. L. Newcombe.*

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