

The Montreal Public Service Corporation - *Appellants,*

v.

Evariste Champagne - - - - - *Respondent,*

FROM

**THE SUPERIOR COURT, SITTING IN REVIEW, FOR THE DISTRICT
OF MONTREAL, PROVINCE OF QUEBEC.**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH NOVEMBER, 1916.

Present at the Hearing:

THE LORD CHANCELLOR.

LORD DUNEDIN.

LORD PARKER OF WADDINGTON.

LORD WRENBURY.

SIR ARTHUR CHANNELL.

[Delivered by THE LORD CHANCELLOR.]

Their Lordships do not desire to hear the respondent in this case, for in their opinion the appeal fails.

The real question in dispute is whether or no the appellants have committed such a breach of a contract made by them with the respondent as to entitle the respondent to treat the contract as determined and upon this basis to sue for damages.

The history of the matter is this. A Company, known as the Saraguay Electric and Water Company, was originally incorporated by Letters Patent in 1906, but in 1908 it obtained a statutory incorporation, and continued working under this statute until 1912. What happened then is not quite clear, but owing to the provisions of another statute, passed in that year, either the appellant Company was established or the old Company was reincorporated under a new name. It is unnecessary to consider the exact operation of the statute, since, for the purposes of this appeal, it is agreed that the appellants should be treated as standing in the position of the original Company. In 1912 there was already existing a contract which had been made on the 14th July, 1909, between the Saraguay Electric and Water Company and the respondent. The question is whether that contract has been broken. Its terms are special. It appears that the Company were anxious to secure the services of the respondent for a long period

of time as their general manager, and the contract, which is a contract of service, accordingly engaged him for a period of ten years at an increasing salary, beginning at 2,000 dollars a year, and going up to 5,000 dollars a year, the first payment to be made on the 1st April, 1910, some seven or eight months after the date of the contract. The first two clauses of the contract give rise to no controversy at all. The third, fourth, and fifth are important. The third provides that the respondent shall have the power of engaging the chief engineer and all other employees of the Company and of dismissing them, and then it continues :—

“and all the administration of the business of the Company shall, subject only to such direction and control as it is the duty of the directors to exercise, be left to, and be under the control of, the second party,”

—that is the respondent. It is said that so to delegate the authority which was primarily vested in the directors is *ultra vires* the Company, and that consequently the whole agreement is bad. In their Lordships' opinion there has been no such general delegation of the powers of the directors as to support that contention. If clause 3 be carefully and critically scrutinised it appears that the power given to engage the chief engineer and the other employees, and the power to dismiss them, is nothing but a description of one of the special powers which are to be enjoyed by the respondent under the general power of administering the business of the Company. It is, in fact, nothing but a specification of one of the general duties conferred upon him by the latter part of the clause, which provides in terms that all the administration of the business of the Company shall, subject only to such direction and control as it is the duty of the directors to exercise, be left to, and be under his control. With regard to the appointing of the chief engineer and other employees, and their dismissal, although the primary duty of selecting and discharging them rests with the respondent, there still remains the general direction and control, which it is the duty of the directors to reserve. The same thing is made plain by considering clauses 4 and 5. It is not, however, necessary to examine those clauses in detail, having regard to the view their Lordships have expressed as to clause 3. There is therefore no foundation for the contention that this agreement was *ultra vires*.

Now, what subsequently happened was this. On the 3rd February, 1913, two resolutions were passed by the Company, the first of which provided that the respondent

“be under the direct control and direction of the board of directors, who hereby delegate to the President of the Company the control and direction vested in them as to the above-named official, and the said manager and managing director is hereby directed not to take any action as manager and managing director, without the approval in writing of the President, the board of directors hereby delegating to said President all their power for the management of the Company when the board is not in Session.”

The second resolution on the same date appointed Mr. Thornton chief engineer and operating manager of the Company,

“with full charge of the engineering and operating of the Company,
“and that this official be directly under the control and direction
“of the board of directors, who hereby delegate to the President of the
“Company the control and direction vested in them over the above-
“mentioned official.”

It is quite plain, from a mere cursory examination of these resolutions, that they materially altered powers of the respondent and the duties which he had contracted to perform. Under the contract there were vested in his hands the general powers of management, subject only to the control of the Company. Therefore he primarily had power to do all the things that he thought fit, including the employment and discharge of servants. In the execution of his duty if any act of his was not approved by the Company it would be open to them, no doubt, to supervise his action, but under the resolutions of February 1913 all initiative is taken away, and he cannot do a single act without the approval in writing of the President, to whom the directors have delegated their powers of control. It is impossible to think that the duties which the respondent would be called upon to discharge under a contract containing such provisions bore any close relationship to those specified in the contract under which he entered into the service of the Company.

Shortly before or after the passing of these resolutions a question arose as to the dismissal by the respondent of two employees of the Company, and if the matter had rested merely on that, and nothing further, there might be something to be said for the appellants' contention that this was a dispute with regard to an act of management over which the Company had control; but associated with that question was the question which the respondent immediately raised as to the position that he occupied by virtue of the resolutions, and on the 4th February, 1913, he writes a letter in which he makes the following statement:—

“Now I regret to state that I positively refuse to submit to these
“resolutions of the 3rd February instant, which, in my judgment,
“cancels (*sic*) in its essential part my engagement of the 14th July,
“1909, and substituted in its place a new contract entirely different
“from the first.”

Their Lordships think that the respondent was quite right in the view that he took as to the effect of those resolutions, and in asserting that the position he occupied under the contract was such as to relieve him from obedience to their terms. If the company had answered by saying that in these circumstances they would rescind the resolutions, no question would have arisen, but they took no such step,

and there can be no doubt that the real issue in this case is whether or not the respondent is bound to continue to serve the company under these altered terms of service, or whether he is entitled to rely on the terms as they originally were made. The company have alleged that they are ready and willing to pay him his salary. That would be a very relevant and material matter on the question of damages if they had been ready and willing to continue to pay wherever he went, but they are only ready and willing to pay if the respondent continues in their service upon the terms of the original contract, as modified by the resolutions, and to that he is not bound to submit.

Their Lordships therefore think that the Company, by their action in passing and adhering to the resolutions of the 3rd February, 1913, committed a breach of this contract, entitling the respondent to assert that the contract was at an end, and justifying him in maintaining the suit for damages, in which he has succeeded.

Their Lordships therefore think that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

THE MONTREAL PUBLIC SERVICE
CORPORATION

v.

EVARISTE CHAMPAGNE.

DELIVERED BY
THE LORD CHANCELLOR.