

CANADA / JUDGMENT

Meighen v. Pacaud

(1908) 40 SCR 188**COURT**

Supreme Court of Canada

DECIDED

5 May 1908

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Meighen v. Pacaud Collection Supreme Court Judgments Date 1908-05-05 Report

(1908) 40 SCR 188 Judges Fitzpatrick, Charles; Davies, Louis Henry; Idington, John; Maclellan, James; Duff, Lyman Poore On appeal from Quebec Subjects Property law Decision Content Supreme Court of Canada Meighen v. Pacaud, (1908) 40 S.C.R. 188 Date: 1908-05-05 Robert Meighen (Plaintiff) Appellant; And Abraham L. Pacaud (Defendant) Respondent. 1908: February 27; 1908: May 5. Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Maclellan and Duff JJ. ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC. Title to land—Construction of deed—Easement appurtenant—Use of common lane—Overhanging fire-escape—Encroachment on space over lane—Trespass—Right of action. A grant of the right to use a lane in rear of city lots "in common with others," as an easement appurtenant to the lots conveyed, entitles the purchaser to make any reasonable use, consistent with the common user, not only of the surface but also of the space over the lane. The construction of a fire-escape, three feet wide with its lower end 17 feet above the ground (in compliance with municipal regulations), is not an unreasonable use nor inconsistent with the use of the lane in common by others; consequently, its removal should not be decreed at the suit of the owner of the land across which the lane has been opened. Judgment appealed from affirmed, Maclellan J. dissenting. APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal, by which the plaintiff's action was dismissed with costs. The respondent purchased several lots shown on a plan of subdivision of a block of land fronting on St. Catherine Street, in Montreal, from the plaintiff's auteurs "with the use in common with others" of a lane in rear, 18 feet in width, leading from Drummond Street to Mountain Street, and giving access to the property from the last mentioned streets. He constructed buildings upon the lots he had purchased extending from St. Catherine Street in the front to the line of the lane in rear, and subsequently, in accordance with the requirements of municipal regulations, erected a projecting staging or fire-escape on the rear wall of the building projecting about three feet over the lane, the lower portion being about 17 feet above the surface of the ground. Several other lots in the same sub-division were sold to other persons, who were also given the right of using the lane, in similar terms. The appellant, having purchased the

remainder of the land thus subdivided, brought the action to compel the respondent to remove the fire-escape, claiming that the lane had been conveyed to him with the remainder of the property and that the respondent had trespassed thereon by so erecting the overhanging fire-escape. The action was dismissed by Dunlop J., at the trial, and this decision was affirmed by the judgment now appealed from, Bossé and Trenholme JJ. dissenting. The questions at issue on the appeal are stated in the judgments now reported. Campbell K.C. and Brosseau K.C. for the appellant. Mignault K.C. and Beullac for the respondent. The Chief Justice.—I am of opinion that this appeal should be dismissed with costs. Davies J.—The controversy between the parties to this appeal is as to the proper construction to be placed upon the clause of the defendant's deed which says that it was the intention of the vendors to sell the land as therein described with the use in common with others of the said lane in the rear. The premises are situated in the heart of the City of Montreal. The appellant, who after the respondent had purchased his land became the owner of the lane in question subject, of course, to whatever rights the respondent and others had obtained over it by their deeds, claimed that such rights were simply rights of way and that the attaching by the respondent to his house of a fire-escape which for its width extended over the lane was in excess of his rights and in violation of the appellant's. The courts below held that the respondent's rights were not limited to mere rights of way over the lane embracing access to and from his house, but that they included a reasonable use of the lane as such for all proper purposes not inconsistent with the common use of others entitled to use the lane or with the appellant's ownership of the soil. They held that the construction of the fire-escape complained of, in compliance and accordance with the municipal regulations, was such a reasonable use. I agree that, looking at the situation of the land and the buildings and of the parties with relation to the lane and the ordinary streets of the city, this construction is a correct one. I do not think a construction which gave the respondent a mere right of way in and over the lane and denied him the right to its use for the purpose of obtaining light and air for his house, the rear of which faced on the lane, would be a reasonable construction. As pointed out, such limited construction involved the right of the owner of the soil to build up the lane and exclude light and air from the windows of all the houses facing on it, provided a sufficient right of way was left over the soil. I cannot agree that this is a reasonable construction of the deed. The common user by others entitled to use the lane is the test with which to measure the respondent's rights in the lane. Any user inconsistent with that common user would be illegal as would also any user interfering with the rights retained by the owner of the soil of the lane. It was not a question in this case as to the manner of the construction of the fire-escape or whether it came down too far or was too broad but simply whether or not his rights entitled him to put any fire-escape at all where he did. As far as the evidence goes, it seems to have been constructed in accordance with the municipal regulations, and the right to so construct it does seem to me to be a not unreasonable use of the lane and not necessarily to interfere with the common use of the lane by others entitled to such common use. I agree that the appeal should be dismissed with costs. Idington J.—I think that the instrument to be interpreted when read in light of the surrounding facts and

circumstances attendant upon its execution does not provide merely for a passage way over the land in question, but for the more extended use of that space implied in such uses as were then being made of the same by other owners of adjoining properties claiming in the same right and to become users in common with the respondent. The primary use intended no doubt was to be that of a passage way and anything clearly inconsistent with that possibly might be complained of. The case launched, however, was neither confined to nor substantially founded upon such a complaint. The contention here seems an extreme assertion of a naked right of property the maintenance of which might injure others and do the appellant no good if my interpretation of the instrument is correct. The language used is not that usually employed for a mere right of passage way. I think the appeal should be dismissed with costs, MacLennan J. (dissenting).—I would allow this appeal for the reasons given by Mr. Justice Bossé in the Court of King's Bench, to which I may be allowed to add some further reasons. A lane is a way, a strip of land used for passage to and fro. It may be private, but it is usually owned by one person, who, or some antecedent owner, has given the right to use it to one or more other persons. That is the present case. One Laurie subdivided a nearly square piece of land fronting on St. Catherine Street, Montreal, into twenty-three building lots, with a lane eighteen feet wide running across the centre, from Mountain Street to Drummond Street and he or his representatives sold a number of these lots, extending from St. Catherine Street to the said lane in rear, to the respondent. In the deed, the north-west boundary of the land so sold is described as a common lane, and the interest in the lane which is conveyed is described thus: with the use, in common with others, of the said lane in rear. It is plain, therefore, that the result of the conveyance was that the vendor remained owner of the lane and the purchasers became entitled to use it in common with others, that is, to use it as a way. Whatever right the respondent acquired was fixed once for all at the date of his deed. He has acquired no further right since. Now I will suppose that at that time the vendor still owned, and retained for his own use, some of the land on the other side of the lane, opposite to that of the respondent. Can it be doubted that he could build upon that land, excavating vaults and cellars and extending them beneath the lane to its full width? Or that he could project the upper stories of his buildings across the lane, for its full width, at a sufficient height, not to interfere with the use of the lane as a way? It seems to me that there can be no doubt that he could do so. And, if he could, he could sell and dispose of those rights to any other person. If that is so, it follows that, by the creation of his fire-escape, the respondent has been guilty of a trespass, and an illegal invasion of the appellant's property, and an unauthorized use of the lane otherwise than as a way. Duff J.—I concur in the opinion stated by Mr. Justice Davies. Appeal dismissed with costs. Solicitors for the appellant: Brosseau, Cholette & Tansey. Solicitors for the respondent: Goldstein & Beullac.

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