

CANADA / JUDGMENT

Tremblay v. Bernier

(1892) 21 SCR 409

COURT

Supreme Court of Canada

DECIDED

6 October 1892

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Tremblay v. Bernier Collection Supreme Court Judgments Date 1892-10-06 Report

(1892) 21 SCR 409 Judges Strong, Samuel Henry; Taschereau, Henri-Elzéar; Patterson, Christopher Salmon; Fournier, Téléphore; Gwynne, John Wellington On appeal from Quebec Subjects Professional law Decision Content Supreme Court of Canada Tremblay v. Bernier, (1892) 21 SCR 409 Date: 1892-10-06 JOSEPH ARTHUR TREMBLAY J (PETITIONER) Appellant; And MICHEL ESDRAS BERNIER, et al, (RESPONDENTS) Respondents. 1892: Oct 06 PRESENT:—Strong, Fournier, Taschereau, Gwynne and Patterson JJ. ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE). Notarial Code—R. S. Q. Art. 3871—Board of Notaries—Disciplinary powers—Prohibition. When a charge derogatory to the honour of his profession is made against a notary under the provisions of the Notarial Code, R. S.Q. Art 3871 which amounts to a crime or felony the Board of Notaries has jurisdiction to investigate it without waiting for the sentence of a court of criminal jurisdiction. APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) ([1]) reversing the judgment of the Superior Court ([2]), which had maintained a writ of prohibition restraining the respondents in their proceedings on a complaint made before them against the appellant. The facts which gave rise to the petition in prohibition are briefly as follows:— The 7th August, 1890, L. P. Sirois, syndic of the Board of Notaries of the Province of Quebec and one of the respondents, made before the board a complaint against the appellant. By that complaint the appellant was charged with having on the 19th October, 1887, caused to be delivered to the Registrar of deeds, of Charlevoix and Saguenay, to be registered, a false and untrue copy certified by him as notary of a deed of main levée and discharge which. never existed. and which appeared to have been executed before him on the 17th of the same month, in the city of Montreal, by Madame Josephine Eleonore d'Estimauville, widow of the late Leon Charles Clement of the mortgage created in her favour dated the 23rd October, 1882 upon an immovable being" no. 277 of the official cadastre of Les Eboulements; and also with having on the 3rd March, 1887, caused to be delivered for registration to the same registrar of deeds, a document purporting to-be a true copy certified by him as notary of a false and forged deed of discharge, appearing to have been executed before him notarially on the 17th January, 1887,. at Les Emoluments, by Joseph W. Tremblay, of a mort-gage for one

hundred dollars in his favour granted by Francois Tremblay, son of Paschal, by deed of the 14th December 1884. The complaint also alleged that the first of these two deeds of discharge of mortgage had been declared false by a judge of the Superior Court for the district of Saguenay and the judgment affirmed in appeal, and, that the appellant was thereby guilty of acts derogatory to the honour of the profession. The appellant was summoned to appear before the committee on discipline of the Board of Notaries to answer to these charges. He appeared by his attorney and then filed a declaration in writing by which he took exception to the jurisdiction of the committee on discipline appointed by the Board of Notaries, and objected to their power to deal with complaints of this nature. He also by special preliminary objections alleged that the complaint against him could not be maintained. The preliminary objections having been overruled the appellant pleaded specially that inasmuch as the charge against him amounted to a felony the committee on discipline had no power to try him or pronounce in the matter so long as it had not been "legally proved and followed by a final sentence of a competent court." The complaint was thereupon proceeded with and a number of witnesses were examined, when the proceedings were suddenly arrested by the issue and service upon the respondents of a writ of prohibition at the instance of the appellant, who by petition, under art. 1031 C. C. P., had applied for a writ to prohibit the committee on discipline and the respondents nominatively from proceeding further with the accusation before them. The grounds urged in the petition were:— 1st. That the respondents were proceeding to take evidence of forgeries without producing the documents impugned; and 2nd. That the charge against the petitioner being one of felony could not be inquired into by the committee on discipline so long as it had not been legally proved and followed by a final sentence of a competent court. in answer to the merits of the petition for prohibition the respondents inter alia pleaded: 1st. That it was their right and duty to take cognizance of the complaint made against the appellant and that their proceedings were legal; 2nd. That in acting as they have done the Board of Notaries have never pretended to exercise a jurisdiction, nor judicial powers. Be court, for the appellant, cited and relied on art. 3871, section 8 R. S. Q.; Abbott's Digest of the Law of Corporations ([3]); High's Extraordinary Legal Remedies ([4]); Brice on ultra vires ([5]); Lloyd on Prohibition ([6]). Mr. Fremont and .Mr. Languedoc for respondents, contended that respondents were proceeding within the scope of their powers under Title X. of the Revised Statutes of Quebec, and which is known as the "Notarial Code" and that they had the right to investigate the charges made against the appellant. STRONG J.—We are all agreed that this appeal should be dismissed. My own opinion is based upon this: The act charged, which the writ of prohibition in this case would restrain the Committee of Discipline of the Board of Notaries of the Province of Quebec from investigating, was one derogatory to the honour of the profession of a notary, and comes within the first part of art 3871 R S Q. I do not read subsection 8 of this art. 3871 viz. "The commission of a crime or felony l legally proved and followed by a final sentence of a "competent court," as intended to restrict in any way the jurisdiction of the committee under the first part of the article. On the contrary I think it was intended to provide for cases where a crime or felony is committed by a notary outside of his duties,

as, for instance, if such an officer should be convicted of arson or burglary an offence having nothing whatever to do with his professional quality, and the intention of the statute is that when such crime or felony has been legally proved the convicted person should not be allowed to remain a notary, and that it was not intended by this sub-section 8 that if a notary should be guilty of conduct derogatory to the honour of his profession, Which professional misconduct would also be a crime or felony that the committee should then be incapacitated from taking cognizance of the case and of suspending him until he was legally convicted on an indictment. For these reasons, which are the same as those upon which the Court of Queen's Bench proceeded, as stated in the opinion of Mr. Justice Hall, the appeal must be dismissed with costs. Fournier and Taschereau JJ. concurred. GWYNNE J.—I think it was quite competent for the court of committee of discipline to entertain a charge of the committal of acts which, if committed, would subject the person doing them to indictment for felony; such charge would be cognizable by the committee of discipline sitting" in the present case, although the party accused had not been tried. PATTERSON J.I concur in dismissing the appeal. I have nothing of any importance to add to what my brother Strong has said. I would however like to make an observation as to the contention that under the 8th sub-section of art. 3871 R.S.Q. there is no "jurisdiction to investigate any charge of felony except when a conviction has been obtained. It seems to me beside the question altogether. The one question is whether the charge is one which in the judgment of the board is derogatory to the honour of the profession. What was done may or may not have amounted to forgery. A man has been held guilty of forgery although the deed declared forged was in fact made and executed as it purported to be, and was what the parties to it intended it to be but was ante-dated with intent to defraud. The case of the Queen v. Ritson ([7]) is a case of this kind. But I do not think this a criterion of the jurisdiction of the board. The particulars mentioned in the 8th subsection of this article 3871 are declared absolutely to be derogatory in addition to those which may be so held by the board in their discretion, and there are certainly many cases in, which this discretion can be exercised. Besides things are some things under article 3871 which maybe felony, and, which do not come under subsection 8. For example, embezzlement is in several cases felony under the criminal statutes and subsection 6 which says nothing of conviction would cover some of these cases of felonious embezzlement The board do not convict of felony. Their decision would have no effect in a prosecution for felony under the same facts on which they act, and could not be pleaded to an indictment founded on those facts. Appeal dismissed with costs. Solicitor for appellant : L. F. Pinault. Solicitor for respondents : J. Fremont.

[1] Q.R 1 Q. B. 176.

[2] 17 O. L. R. 185.

[3] Vo. Expulsion No. 4.

[4] P. 557 No. 772.

[5] Ed. 1377 p. 370.

[6] P. 53.

[7] L. R. 1 C.C.R. 200.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/13880/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tremblay-v-bernier-1892>

Prepared on 29 October 2026 · Esheria