

1927

No. 7809.

Aug. 10.
Sept. 14.

J. LAURENT MORENCY SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Petition of Right—Practice—Amendment—Fiat—Substitution of parties
—Costs.*

The Crown expropriated certain lands, and in the plan and description deposited in the Registry Office, named M. as the owner of a part. M. then, having obtained a Fiat from the Crown, filed a Petition of Right in this court claiming the value of the land expropriated. M. later discovered that his wife and not himself was the owner of the land expropriated, and a motion was made for leave to amend the Petition of Right by substituting the wife's name for that of M. as suppliant.

Held, that as no action can be taken against the Crown without first obtaining its Fiat which gives the Court jurisdiction, such an amendment could not be allowed and the motion was, under the circumstances, dismissed without costs.

MOTION to amend Petition of Right by substituting the name of the suppliant's wife for the suppliant.

Motion heard before the Honourable Mr. Justice Audette, at Quebec.

R. Langlais K.C. and *A. Rivard* for the motion.

L. G. Demers and *O. Mayrand*, contra.

The facts are as stated in the reasons for judgment.

AUDETTE J. this 14th day of September, 1927, delivered judgment.

This is a motion, on behalf of the suppliant, for leave to amend the petition of right herein by substituting his wife to himself as suppliant, since his wife is the owner of the land in question and should have been made suppliant from the beginning.

An admission, signed by both parties, has been filed of record in support of the motion and it is thereby, *inter alia*, admitted by paragraph 3 that—

The error arises from the fact that the Department of Railways, by its officers, has, on the 1st October, 1923, and on the 20th November, 1923,

deposited in the hands of the Registrar of the registry office for the county of Portneuf, the plan and description of the land to be expropriated in the said county on lot no. 250, in the name of J. Laurent Morency, the suppliant; * * *

1927
 MORENCY
 v.
 THE KING.
 Audette J.

Par. 4.—The error, started by the respondent and its officers, continued on, and the railway has always corresponded with the present suppliant, considering him the proprietor, as it appears by the letter produced with the present Petition and containing the offers made by the respondent.

Par. 5.—A scheme of settlement has been made and Notary Chali-four, representing the respondent, prepared a contract which is also produced with the present Petition and which is of record, which contract is in the name of J. Laurent Morency.

The crown shows cause *contra* and opposes the amendment.

Now, the *fiat* is evidently the basis of the Court's jurisdiction, and a Court has no jurisdiction to entertain a petition of right until the *fiat* of His Majesty is obtained therefor. In the present case, it has jurisdiction to deal only with the case as formulated and for which a *fiat* was given. In *re Mitchell* (1); Clode, *Petition of Right*, pp. 165 and 167; *Tobin v. The Queen* (2).

Therefore this amendment would in effect present a new case between different parties and in such case a *fiat* is needed to allow this new party to sue the Crown. It may be termed a question of considerable constitutional importance and the application must be refused. The prerogative is recognized and must be maintained.

A *fiat* was granted to the present suppliant and it is obviously not within the Court's competence to amend the Petition in such a manner as would allow a new person to sue the Crown. See Robertson, *On Civil Proceedings*, 390. It is a matter of strict law since it is a law of exception.

Coming to the question of costs, after having stated what steps were taken by the Crown on the assumption by its officers that the suppliant was either the owner of the property or the proper person to deal with in respect to the expropriation, it is only fair to say that these facts go a long way to justify the inference by the suppliant that he was the proper party the Crown had chosen to deal with.

(1) (1896) 12 T.L.R. 324.

(2) (1863) 14 C.B. N.S. 505, at p. 521.

1927
MORENCY
v.
THE KING.
—
Audette J.
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There is not a tittle of evidence to establish against the suppliant a charge of attempting to mislead the officers of the Crown. The respondent has suffered no inconvenience and no prejudice thereby. The suppliant has been guilty at the worst of a *bona fide* mistake and the mistake was largely, if not wholly, attributable to what was done by the Crown. In such circumstances it would not be fair and just as between the parties to award the costs against the suppliant. *Martin v. Benson* (1).

The motion to amend is dismissed but without costs, each party paying his own costs.

Judgment accordingly.

(1) (1927) 1 K.B. 771.