## CARRIERE et une AUTRE v. CITE DE LONGUEUIL et AUTRES*

MUNICIPALITY — POLICE OFFICERS — RESPONSIBILITY FOR DAMAGE CAUSED WHILE ON DUTY.

> "Mieux vaut, pour une municipalité, perdre le bénéfice d'une amende que de tuer les gens."[1]

This pronouncement was part of Mr. Justice Edouard Tellier's judgment granting damages to the parents of a young man who had been shot by a Longueuil policeman.

Late one evening two constables in the service of the City of Longueuil saw a car — with no lights on — go through a stop street at an excessive rate of speed. They gave chase, using their siren. When they drew close to the fleeing car they called out to it to stop. When it did not they fired warning shots in the air. The escaping car then struck a post and its occupants fled on foot. One of them was shot.

The victim and his friend had made several attempts that evening to steal a car. They had in fact stolen the car in which they drove through the stop street.

The parents of the young man sued both the police officer who killed their son and the City of Longueuil. Their grounds against the policeman were that he had fired the shot which had caused their son's death and that he had acted imprudently and without necessity in the use of his firearm. The action against the municipality was based on the ground that the defendant was one of its police officers and at the time of the shooting had been in the performance of the duties for which he was employed.

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If municipalities in this province are to entrust their police officers with the possession of revolvers it is of considerable importance that the law concerning the use of these weapons be known.[2]

Article 356 C.C. says that political corporations are goverued by the public law generally, and only "in certain respects" by the civil law. The jurisprudence has not yet satisfied itself as to what these certain respects are. It has generally been held, however, that municipalities in Quebec are governed by the public law.

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*[1957] C.S. 143, Montreal, 30 June 1955. Confirmed by the Court of Appeal 22 Oct. 1956. Unreported.

[1]At page 147.

[2]See here the comment by Michael J. Fawcett, [1955] 33 Can. Bar Rev., 1178.

An important and perhaps somewhat curious principle of this law is that a municipality is not responsible for the damage caused by its constables when they are in the performance of their duties as public peace officers.

> " . . . police officers appointed by a city are not its agents or servants in such sense as to render it responsible for their unlawful or negligent acts in the discharge of their public duties as policemen; . . ."[3]

The more recently accepted view in Quebec has been that each question is one of fact. If it can be shown that the act which caused the damage was done purely in the interests of and under orders from the municipality, then that body is liable for the damage. But if it appears that the damaging act was performed in the interests of society as a whole, that is if it was part of the maintenance of the public peace, then the local municipality cannot be held responsible.

The reasoning here is that the city or town should not be open to recourse for damage caused while preserving order in the state any more than is the state itself. Under such circumstances, the argument runs, the master-servant relationship does not exist between the municipal corporation and its constable. There is no *respondeat superior*. This position has been stated many times in Quebec cases. The decision in *La Cité de Montréal* v. *Plante*[4] has been cited with approval. In that case Mr. Justice Rivard stated it thus:

> "Lors donc qu'un agent de police a, dans l'exercice de ses fonctions, commis quelque acte illégal et dommageable, la responsabilité de la corporation municipale qui l'a nommé sera engagée ou ne le sera point, selon que cet acte aura été commis dans l'exercice de la puissance de l'Etat ou en vue du service particulier de la municipalité. En d'autres termes, l'officier de police nommé par une corporation ne fait encourir de responsabilité à celle-ci que lorsqu'il agit comme sergent de ville pour l'exécution des lois, des ordonnances et des règlements municipaux; lorsqu'il agit plutôt comme gardien de la paix et du bon ordre, il est le préposé de l'Etat, qui le reconnait comme un délégué de sa puissance souveraine, et dans ce cas, la corporation échappe à la responsabilité parce qu'en nommant cet officier elle n'a été que le dépositaire de l'autorité de l'Etat."

The learned judge also stated briefly that even when police officers acted as guardians of the peace, the municipality could render itself liable for any damage they caused by ratification of their acts. The facts of the *Plante* case were that a bailiff had been unable to effect service upon an individual and, rather than follow the recourses laid down by the law, had called in the local police to force an entry for him. Damage was caused to the individual and to his house and he brought suit for it against the municipality. He was upheld; the bailiff had had no right or cause to summon the police. The police, by the same token, could not pretend that they were preserving the peace. As they acted under orders to aid the bailiff the municipality was held liable.

In the present case the two policemen who chased the car alleged in their defence that they knew it was stolen. They argued that they were justified

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[3]Dillon, *Municipal Corporations*, 5th ed. vol. 4 p. 2883.

[4](1923), 34 K.B. 137, at 148.

in acting as they did. The City of Longueuil itself subscribed to their defence and added, in a separate defence, that the two constables had not been acting as its mandataries at the time but as guardians of the public peace, deriving their authority from the Sovereign. Upon these grounds the City argued that it could not be held responsible for the young man's death, especially as it had not authoirzed or ratified the officers' acts.

The court did not stop long over the argument put forward by the two policemen. At the time they saw the car go through the stop street without lights and at an excessive rate of speed, they did not know it was stolen. They couldn't have. What they knew was simply what they saw: the theft of the automobile was not even reported till later.

> "Tout ce que les policiers pouvaient reprocher aux occupants de la voiture lorsqu'ils aperçurent cette dernière sur la rue Guillaume, c'était une violation aux règlements de la Cité de Longueuil, concernant la circulation."[5]

Without hesitation the learned judge concluded that the police officers had had no justification whatever in acting as they did:

> ". . . les policiers ont agi imprudemment, ils ont employé une violence et une force injustifiées, ils ont usé de moyens arbitraires, inconsidérés, inexplicables, ils ont manqué de jugement et de mesure."[6]

The defence put forward by the city is more interesting. Not only did it adopt the constables' argument that the car was stolen and therefore required forceful pursuit, but it alleged that its own traffic regulations had been breached. Then, by a separate defence, it contended that the constables had not been acting as its préposés at the time.

The city here was seeking a decision similar to that in *Hébert* v. *Cité de Thetford Mines*.[7] In that case a police constable had killed a rioter while in the employ of a circus which was visiting his municipality. He had successfully defended an action brought against him by his victim's widow and in a suit of his own was attempting to recover the costs of that defence from the municipality. It was held, first, that he had been employed by the circus at the time of the shooting, and that a mandatary can only bind one mandator at a time even when acting for several; and, second, that he was discharging the duties of a peace officer. Municipalities cannot, upon the ruling in the *Plante* case, be held liable for damage caused at such times unless they have ratified the damaging acts. There had been neither allegation nor proof of ratification.

In the case under review, the City of Longueuil was attempting to gain the same position. It failed on two counts. First, the facts were against it: at the time the police officers could not have laid a criminal charge because they had before them no evidence of a breach of the peace. They could complain of no

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[5] & [6] At page 146.

[7] [1932] S.C.R. 424.

more than a failure to obey a municipal traffic regulation. This alone would have been enough to defeat the city's case but in addition it had in fact ratified the acts of the two constables by its own defence.

The case of *Roy* v. *The Municipal Corporation of Thetford Mines* had to be distinguished at this point.[8] Roy was suing the municipality and certain of its police officers for arresting and holding him without charge and searching his house. He had been arrested upon a complaint of indecent exposure made by a private citizen, his house had been searched and his handwriting had been sampled on the advice of the Provincial Police in connection with the suspected mailing of obscenities, and when the municipal police did lay a charge it was one of vagabondage. The charge was not considered for several months and when it was, it was dropped.

In its defence to this action the municipality said that the police officers had acted in good faith and in no way to injure Roy's reputation. Roy argued that this was a ratification of their acts. The municipality had in addition denied its liability for any damage caused. It was held by the court that there had been no ratification by the city and that its defence was in a legitimately alternate form.

The judgment in the present case does not go into the City of Longueuil's approval of its constables' behaviour or how the court distinguished the *Roy* decision. It simply holds that by its defence the city did ratify their acts. This made it responsible for any damage resulting from those acts. The point is somewhat incidental, however, in view of the fact that, as stated in the *Plante* case, to bind the municipality ratification is only required when the police acted as officers of the state, and in this case they clearly did not.

Plaintiffs were accorded damages, but only in the amount of $3,887.25. The decision does nothing to alter the doctrine which says that a private citizen who suffers damage at the hands of a police constable has no recourse against anyone but the constable himself when the latter was engaged in maintaining the public peace.

On the other hand, in circumstances which reveal no breach of the peace, it will now be of little use to municipalities to deny their liability for damage caused by their policemen on the grounds that these officers acted as mandataries of the Sovereigu.

JAMES BRIERLEY,*

[8][1954] S.C.R. 395.

*Fourth year Law Student, McGill University.