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MARIO FURLAN APPELLANT;

AND

THE CITY OF MONTREAL AND
OTHERS RESPONDENTS.

ON PROPOSED APPEAL FROM THE SUPERIOR COURT,
DISTRICT OF MONTREAL

Appeal—Jurisdiction—Motion for leave to appeal—“Highest court of final resort”—Whether appeal to this Court from provincial court of original jurisdiction, when no further appeal from that court—Sections 36, 37(3) Supreme Court Act.

No appeal lies to this Court “except from the highest court of final resort having jurisdiction in (a) province”, according to the plain wording of subsection 3 of section 37 of the *Supreme Court Act*.

*Present:—Rinfret C.J. and Kerwin, Taschereau, Rand and Kellock J.J.

Provisions of section 36 of the Act do not contemplate, as contended by the appellant, that an appeal would lie to this Court from a provincial court of original jurisdiction, on the ground that, for the purposes of a particular proceeding, there is no further appeal from that court.

Under section 36, it is immaterial whether "the highest court of final resort" has appellate or original jurisdiction, or both: in either event there is to be no appeal except from such highest court and not merely from a court which may be the court of last resort in any particular proceeding.

James Bay Railway Co. v. Armstrong ([1909] A.C. 624) foll.

International Metal Industries Ltd. v. City of Toronto ([1939] S.C.R. 271) aff.

MOTION for leave to appeal to this Court from the judgment of the Superior Court for the district of Montreal, in the province of Quebec, Gibsone J., quashing a writ of *certiorari* issued against the respondents and affirming a judgment of a Recorder of the city of Montreal, which found the appellant guilty of violating a by-law of that city.

W. G. How for the motion.

A. Berthiaume K.C. contra.

THE COURT:—This is a motion for leave to appeal to this Court from the judgment of the Superior Court of Montreal. Leave to appeal has already been refused by the Court of King's Bench, Appeal Side. It is argued on behalf of the applicant that notwithstanding that no right of appeal to the Court of King's Bench exists from the judgment of the Superior Court, nonetheless this court may grant leave.

The Supreme Court of Canada is a statutory court with limited jurisdiction and if it has authority to grant the leave sought, such authority must be found within the terms of the statute. By Geo. VI, c. 42, the Act was amended and the following is now section 37, subsection 3;

Save as provided by this section, but subject to section forty-four, no appeal shall lie to the Supreme Court except from the highest court of final resort having jurisdiction in the province in which the proceedings were originally instituted.

It is not suggested by the applicant that the present motion comes within the terms of section 37 itself and it is admitted that section 44 has no application. Accordingly, by the plain words of the remainder of the subsection there

1947
 FURLAN
 v.
 CITY OF
 MONTREAL

1947
 FURLAN
 v.
 CITY OF
 MONTREAL
 The Court

is no appeal except from the "highest court of final resort having jurisdiction in the province". It is plain from subsection 2 of the section that the "highest court of final resort" having jurisdiction in the province is, in the province of Quebec, the Court of King's Bench, Appeal Side. Accordingly this court is prohibited from exercising any appellate jurisdiction in an appeal which does not come from the Court of King's Bench, Appeal Side.

It is contended on behalf of the applicant that it is contemplated by section 36 that an appeal lies from a provincial court of original jurisdiction where, for the purposes of the particular proceeding in question, there is no further appeal. Even if there were any ambiguity in the language of that section (and we think there is not) such ambiguity would be resolved by the express language of section 37, subsection 3. In our opinion all that section 36 does is to make it immaterial whether "the highest court of final resort" has appellate or original jurisdiction, or both. In either event there is to be no appeal except from such highest court and not merely from a court which may be the court of last resort in any particular proceeding.

The question of the jurisdiction of this court in a matter such as this has already been determined adversely to the applicant's contention by the Privy Council in *James Bay Railway Company v. Armstrong* (1). Their Lordships in dealing with a similar argument there said:

Now, unquestionably, the Court of Appeal in Ontario is the highest court of last resort having jurisdiction in the province. The High Court is not. It was argued that in this particular case the High Court becomes "the highest court of last resort" when no appeal lies from it to the Court of Appeal, and it is placed by statute for the purpose in hand on an equal footing with the Court of Appeal. But their Lordships think that that result cannot be attained without unduly straining the words of the statute, and that, except in certain specified cases within which the present case does not come, an appeal to the Supreme Court lies only from the Court of Appeal.

Since the amendment of the *Supreme Court Act* in 1937, already referred to, this court has decided the same point in a similar sense in *International Metal Industries Limited v. The Corporation of the city of Toronto* (2).

The application must therefore be dismissed with costs.

Leave to appeal refused.

(1) [1909] A.C. 624, at 631.

(2) [1939] S.C.R. 271.