JOSEPH DANJOU.....APPELLANT; 1879

AND

FIRMIN MARQUIS .....RESPONDENT.

*Jan'y 21.
*April 16.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER CANADA (DISTRICT OF RIMOUSKI.)

Appeal—Mandamus—Supreme and Exchequer Court Act, secs. 11, 17 and 23.

Held: That the appeal in cases of *mandamus*, under section 23 of the Supreme and Exchequer Court Act, is restricted by the application of sec. 11 to decisions of "the highest court of final resort" in the Province; and that an appeal will not lie from any Court in the Province of *Quebec* but the Court of Queen's Bench. (*Fournier* and *Henry*, J. J., dissenting.)

Query:—Can the Dominion Parliament give an appeal in a case in which the legislature of a province has expressly denied it?

*PRESENT:—Ritchie, C. J., and Strong, Fournier, Henry, and Taschereau, J. J.

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Semble, per Strong, J., there is nothing in sec. 63 of the *Supreme and Exchequer Court Act*, confining appeals from the Exchequer Court to a recourse against final judgments only, the word used being "decision," which is applicable as well to rules and orders not final as to final decisions.

APPEAL from a judgment of the Superior Court of *Quebec*, district of *Rimouski*, dated the 6th May, 1877, on a writ of *mandamus*, adjudging the present Appellant to pay the costs.

On the 30th October, 1876, the Respondent presented a petition (*requête libellée*), alleging that at a meeting of the Municipal Council of the first division of the County of *Rimouski*, held on the 31st August, 1876, the following resolution was adopted:

"That the conclusions of the petition in appeal of *Firmin Marquis* and others be granted; that the by-law of the 17th July last (1876) enacted for the purpose of cancelling a by-law of the Municipal Council of the parish of *St. Fabien*, annulling a by-law of the same Council, bearing date February, 1876, which grants a by-road (*route*) on the line between *Samuel Bouchard* and *Luc Roussel* in the fourth range, be annulled, and that the said by-law of the month of February be declared valid, and be enforced according to its form and tenor, the whole with costs against the Respondents;"

That the minutes of the proceedings were not signed on that day by the appellant, and that respondent, who had a deep interest in the immediate opening of the by-road subsequently requested the appellant to sign the said minutes, which he refused to do.

The petition, therefore, prayed for the issuing of a writ of *mandamus*, commanding Mr. *Danjou*, in his quality of Warden to said Council, to sign immediately in the register of the proceedings of the said Council, the minutes of the 31st August, 1876, with costs.

The writ was issued by order of Mr. Justice *Maguire*

and made returnable before him, at *Rimouski*, on the 8th November then next. After issue joined, in the month of December, the appellant signed the minutes, and on the 26th May, 1877, Mr. Justice *Maguire* gave judgment, adjudging the present appellant to pay the costs. From that judgment the appellant appealed to the Court of Queen's Bench for *Lower Canada* (appeal side) and that Court on the 8th September, 1877, on a motion to quash, rejected the appeal for want of jurisdiction, holding that under art. 1033, C. C. P., the judgment of the Superior Court in this case was final and in last resort. On the 22nd September, 1877, leave was granted by Mr. Justice *Maguire* to appeal direct to the Supreme Court of *Canada*.

Before the Supreme Court the respondent moved to quash the appeal, principally on the following grounds:

"Whereas the said appellant has not appealed from the judgment of the said Court of Queen's Bench, but from the judgment rendered by the honorable Judge *Maguire*, and that such appeal to this honorable Court is allowed only from the judgment of the Court of last resort in the Province where such judgment has been rendered, and in the present cause, from the judgment of the Court of Queen's Bench, which is the court of last resort in the Province of *Quebec*, according to section eleven (11), cap. 11, 38 *Vic.*, and that an appeal lies directly to the Supreme Court from the judgment of the court of original jurisdiction only by the consent of parties, according to section twenty-seven (27) of the said chapter, and that such consent has never been given by the respondent or his attorney;

"Whereas, by and in virtue of the laws of the Province of *Quebec*, no appeal lies in matters concerning municipal corporations and municipal offices, as provided by the articles 1033 and 1115 of the Code of Civil Procedure of *Lower Canada*, and that the *mandamus* in

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this cause has been issued against the appellant in his capacity of municipal officer, and to force him to fulfil the duties and obligations inherent to a municipal office, and that no appeal lies before this honorable Court from the judgment rendered by the honorable Judge *Maguire*, and that, even if such an appeal to this honorable Court did lie, this present appeal could not be maintained, having been brought after the delay mentioned in section 25th, cap. 11, 38 *Vic.*"

Mr. *Cockburn*, Q. C., supported the motion. Mr. *McIntyre*, *contra.*

STRONG, J.:—

This is a motion to quash an appeal pursuant to sec. 37 of the Supreme Court Act. The appeal is from a judgment rendered in the Superior Court of *Lower Canada* under the following circumstances. The Municipal Council of the municipality of which the appellant was the presiding officer, having passed a by-law in which the respondent had an interest, the latter obtained from the Superior Court for the District of *Rimouski* a writ of *mandamus*, in order to compel the appellant to sign the minutes of the meeting of the Council in which the by-law had been passed. After service of the writ the appellant signed the minutes. The Superior Court, or a Judge thereof in Chambers, on the 6th May, 1877, gave judgment adjudging the present appellant to pay the costs. From that judgment the appellant appealed to the Court of Queen's Bench for the Province of *Quebec*, and that Court, on the 8th of Sept., 1877, rejected the appeal for want of jurisdiction, holding that the judgment of the Superior Court was final and in last resort. The appellant has now appealed to this Court from the judgment of the Superior Court. A motion having been made by the

respondent to quash the appeal for want of jurisdiction, it was argued during the session of this Court in January, 1878, and re-argued during the last session.

By section 11 of the Supreme Court Act it is (*inter alia*) enacted:

And when an appeal to the Supreme Court is given from a judgment in any case, it shall always be understood to be given from the Court of last resort in the Province where the judgment was rendered in such case.

The 17th section is as follows:

Subject to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from all final judgments of the highest Court of final resort, whether such Court be a Court of Appeal or of original jurisdiction now or hereafter established in any Province of *Canada*, in cases in which the Court of original jurisdiction is a Superior Court; provided that no appeal shall be allowed from any judgment rendered in the Province of *Quebec* in any case wherein the sum or value of the matter in dispute does not amount to $2,000; and the right to appeal in civil cases given by this Act shall be understood to be given in such cases only as are mentioned in this section, except Exchequer cases and cases of *mandamus*, *habeas corpus*, or municipal by-laws, as hereinafter provided.

Section 23 enacts that:

An appeal shall lie to the Supreme Court in any case of proceedings for or upon a writ of *habeas corpus* not arising out of a criminal charge, and in any case of proceedings for or upon a writ of *mandamus*, and in any case in which a by-law of a municipal corporation has been quashed by rule of Court, or the rule for quashing it has been refused after argument.

The clear meaning of section 17 is, that the right to appeal is given from final judgments only, and, in *Quebec*, from final judgments, where the matter in dispute amounts at least to $2,000, except in Exchequer cases and matters of *mandamus*, *habeas corpus* and municipal by-laws, in which judgments not final may be appealed from. By this construction, which makes the exception apply to the provision regarding final judgments, and not to the Court appealed from, sections 11,

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17 and 23 stand well together, without any repugnancy, and it is the primary and natural meaning of the language in which the law is expressed. The exception cannot be read as applying to the proviso limiting the amount appealable in *Quebec* cases, for there would be no meaning in excepting Exchequer cases to which that proviso can have no application.

If it is said that its object is to except appeals in matters of *mandamus*, *habeas corpus* and municipal by-laws from the provision in the first part of the 17th section, limiting appeals to those from the highest Court of final resort, and to set such cases entirely at large as regards the Courts from which an appeal can be brought, the effect would be to cut down the general provision of the 11th section, by introducing an exception as regards the class of cases spoken of in the latter part of section 17, and in section 23. But we are not to give the general provision of the 11th section such an interpretation, unless it is absolutely requisite. Then, what are the cases in which the 17th section gives the right to appeal ? They are judgments of the highest Court of final resort in the Province in which the Court of original jurisdiction was a Superior Court. The exception of Exchequer cases would be without meaning here ; they would be senseless, idle words, as applying, by way of exception, to the judgments " of the highest Court of final resort " now or hereafter to be established in any province." There is no sensible way of reading this exception but by treating it as distinguishing between a class of cases —ordinary civil actions and suits *inter partes*, in which an appeal is to lie from a *final* judgment only, and those enumerated in it—cases in the Exchequer, and those of *mandamus*, *habeas corpus* and municipal by-laws, in which it is clearly intended that the appeal shall not be restricted to final judgments, but may be

taken from decisions on motions for rules and other applications not final in their nature, as well as from the ultimate determination. This is confirmed by sec. 23, which expressly gives appeals in cases of *mandamus*, *habeas corpus* and applications to quash municipal by-laws, "in any case of proceedings for or upon a writ "of *mandamus*," &c., as well as in any in which a by-law has been quashed, or the rule for quashing it has been refused after argument.

Again, section 68, which regulates appeals from the Exchequer, is quite consistent with this interpretation, since there is nothing in that clause confining appeals from that Court to a recourse against final judgments only, the word used being "decision," which is applicable as well to rules and orders not final as to final decisions.

This construction harmonises with all the provisions of the Act, and makes the several sections 11, 17 and 23 read consistently with each other, without suppressing any words as redundant, or reading any into the Statute by way of necessary implication. Appeals in ordinary civil suits between party and party are, therefore, governed by section 17, whilst appeals in matters of *mandamus*, *habeas corpus*, and municipal by-laws, are regulated by section 23 read, as regards the Court from which an appeal lies, subject to the interpretation clause, section 11 providing that an appeal shall always be understood to be given from the court of last resort in the Province. This disposes of the argument, that the effect of this exception of *mandamus* and cognate matters in section 17 was to emancipate those cases from the limitation as to the courts to be appealed from contained in the interpretation clause section 11.

I think it right to say here that by the allusion which I have made to the words "final judgment" in the 17th section, I by no means assume that those words indicate

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anything more than the meaning attached to them by the interpretation given in the 11th section, which I take to be final as regards the particular motion or application, and not necessarily final and conclusive of the whole litigation.

The next enquiry is, what is the meaning to be attributed to the words "Court of last resort" in section 11? I think it clearly means the highest Court of appeal in the Province in which the suit, action, or other proceeding has arisen. This conclusion is thus arrived at. The object of the 17th section is, as I have already attempted to establish, to limit appeals in civil suits and actions to final judgments, as these words are interpreted in section 11, and in *Quebec* cases to actions in which the matter in dispute is above the specified amonnt. As regards the Court from which the appeal is to lie, there is no reason to infer that the Legislature intended to make any difference between the class of cases particularly dealt with by section 17, and those to which the general provisions of the interpretation clause would apply. It is not to be arbitrarily assumed that the Legislature, by the words "highest Court of final resort," meant a different Court from that indicated by the words "Court of last resort in the Province," in section 11. Then, we may regard the definition of the Court from which an appeal is given in section 17 as intended to repeat with more fullness and particularity, and by way of explanation, the provision of section 11 on the same subject. We are, therefore, to consider the two expressions "Court of last resort" and "highest Court of final resort," as convertible and equivalent in meaning. "Acts of Parliament," it is said by a late writer (1) "are frequently framed in varying phraseology without any intention of conveying a different meaning. In their progress through

(1) Maxwell on Statutes, p. 285.

Parliament, alterations and additions from various hands are made, and thus present the style and language of different authors. In such cases, the more precise and determinate expression is regarded as fixing the meaning of that which may be conceived in language more general or ambiguous."

It follows that the appeal, in cases of *mandamus* under sec. 23, is restricted by the application of sec. 11 to decisions of "the highest Court of final resort." Then, the prefix "highest" entirely shuts out the possibility of the construction which would assign to the words "Court of final resort;" the flexible and varying meaning of Court of last resort in each particular case, as it might, or might not, happen to be subject to appeal to the ultimate Appellate jurisdiction in the Province, and fixes the true meaning as that of last Court of Appeal in the Province, without reference to the particular case; for, though there may be Courts of last resort in different degrees for different cases, it is clear there can only be one *highest* Court of final resort in a Province.

Therefore, it appears plain that an appeal will not lie from any Court in the Province of *Quebec* but the Court of Queen's Bench.

Article 1033 of the Code of Civil Procedure of *Lower Canada* is as follows: "An appeal from any final judg-"ment rendered under the provisions contained in this "chapter, lies to the Court of Queen's Bench, except in "matters relating to municipal corporations and "offices, provided the writ of appeal be issued within "forty days from the rendering of the judgment ap-"pealed from." The Court of Queen's Bench quashed the appeal to that Court, on the ground that this article applied, and that it had no jurisdiction; for the same reason this Court must, in my view, hold that the present appeal is also inadmissible in this Court.

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The interpretation which I have applied to the language of the *Supreme Court Act*, has appeared sufficient to warrant the conclusion arrived at without calling in aid any extrinsic arguments. There are, however, reasons of policy and convenience which show that every presumption should be made in favor of a construction which would refuse an appeal from the decision of a Superior Court of first instance, which the Provincial Statutes have declared to be final and in last resort, and not subject to revision by the Provincial Court of Appeals.

Without touching on what may hereafter come to be an important constitutional question, that regarding the powers of Parliament to confer appellate jurisdiction in particular cases or classes of cases on this Court, and the right of the Provincial Legislatures to withhold it, it would not, I think, be possible to attribute to the terms in which jurisdiction is conferred by the *Supreme Court Act* in the 11th section already referred to, even if it were read as an isolated enactment without any light from other parts of the Statute, a construction which would embrace appeals in cases in which the Provincial laws had precluded resort to the Provincial Court of Appeals. It must be presumed that the Provincial Legislature, in denying the right of appeal, designed to subserve the ends of justice and the requirements of good policy, and it must equally be presumed, in the absence of express words, that Parliament did not intend to subvert those laws, and thus to annihilate Provincial legislation regulating the finality of law suits concerning property and civil rights.

These observations have no reference to the constitutional question which would arise if Parliament was to give an appeal in a case in which the Legislature of a Province had expressly denied it, but they are

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only intended to show how strong an influence such considerations ought to have in favor of a construction which would avoid such a conflict. Had the ambiguous words "Court of last resort" stood alone, this weighty presumption would, in my judgment, have been by itself sufficient to have impressed upon them the same meaning which I have derived from reading them in the light afforded by other provisions of the Statute.

It may well be remarked that no stronger instance of the impolicy of opening this Court to appeals shut out from the Appellate Court in the Province could be afforded than the present case. We have here an appeal respecting a *mandamus* granted against a municipal officer, who complied with the complainant's demand before the judgment was given, whose term of office has long since expired, and who appeals only for the sake of getting rid of the costs, which *primâ facie* his compliance with the demand after the writ was granted shows he was properly ordered to pay.

I think it also right to add that, although in strictness, we may not have it in our power to decline to entertain appeals for costs only, yet that such appeals ought, in my opinion, to be always regarded with the utmost disfavor, that the appellant should not, even though successful, be awarded costs, and that it may be found possible to make him pay costs.

In my judgment the motion must be granted and the appeal quashed with costs.

FOURNIER, J.,:

Cette cause est maintenant devant la cour sur une motion demandant le renvoi de l'appel pour défaut de juridiction, et défaut de cautionnement.

Le présent appel origine des faits suivants :

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Joseph Danjou, l'appelant, préfet de la première division municipale du comté de *Rimouski*, ayant refusé de signer le procès-verbal des délibérations d'une assemblée du conseil de cette division, tenue le 31 août 1876, fut poursuivi devant la Cour Supérieure pour la province de *Québec*, district de *Rimouski*, à l'effet de le faire contraindre d'attester le dit procès-verbal par l'apposition de sa signature.

Après contestation liée, preuve et audition au mérite, la dite Cour Supérieure, siégeant à *Rimouski*, le 26 mai 1877 a rendu le jugement suivant :

Considérant qu'il est établi par la preuve, que le dit *Joseph Danjou*, en sa qualité de préfet et président de la dite session, a illégalement refusé de signer au préjudice du requérant le dit procès-verbal des délibérations et procédés du dit conseil, adoptés à la dite session tenue le trente-et-un août dernier ;

Considérant cependant que le dit *Joseph Danjou* a, depuis le rapport du dit bref de *mandamus* et la contestation liée sur icelui, savoir, dans le mois de décembre dernier, signé le dit procès-verbal des délibérations du dit conseil, adoptées à la dite session tenue le trente-et-un août dernier, le soussigné condamne le dit *Joseph Danjou* simplement à payer les dépens distraits à *J. W. Pouliot*, écr., procureur du demandeur et requérant.

Il ne s'agit pas maintenant du mérite de ce jugement, mais seulement de la motion demandant le renvoi de l'appel pour les deux motifs mentionnés plus haut. Quant au second, savoir, le défaut de cautionnement, comme il a été réglé lors de l'argument, je m'abstiendrai d'en parler. Il ne reste actuellement pour la considération de la cour, que le premier motif, fondé sur le défaut de juridiction, savoir : que le jugement dont l'appellant veut appeler, ayant été rendu en matières municipales, n'est pas susceptible d'appel d'après les arts. 1033 et 1115 du C. P. C. de *Québec*.

La Cour du Banc de la Reine, devant laquelle cette cause a été portée en appel, a donné gain de cause à l'Intimé en se fondant sur les deux articles ci-dessus cités.

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Le présent appel n'est pas de ce dernier jugement, mais de celui de la Cour Supérieure siégeant à *Rimouski*, en date du 26 mai 1877, comme étant la cour jugeant en dernier ressort dans cette cause. Cette procédure a soulevé l'importante question de savoir, si l'appel à cette cour existe d'un jugement en dernier ressort rendu par une autre cour que la plus *haute* cour de dernier ressort, dans la province de *Québec*—c'est-à-dire la Cour du Banc de la Reine.

Les clauses de l'Acte 38 Vict. ch. 11, à consulter pour la solution de cette question, sont les 11e, 17e et 23e.

La 11e est une clause d'interprétation fixant la signification de certaines expressions employées dans l'acte. La 17e donne l'appel dans les causes civiles *seulement* qui y sont mentionnées, et en excepte les causes de la Cour d'Echiquier, celles de *mandamus*, d'*habeas corpus* ou concernant des règlements municipaux pour lesquelles des dispositions spéciales sont faites par la sec. 23. Cette dernière section est celle qui donne l'appel dans les causes soustraites à l'effet de la 17e. [L'honorable juge lit la 17e clause de l'Acte 38 Vic. c. 11.] L'appel dans ces causes a sans doute été excepté des effets de la sec. 17, parce que ces causes, n'étant pas appelables avant la passation de l'acte de la Cour Suprême, elles étaient alors jugées en dernier ressort par les Cours Supérieures de 1ère instance dans toutes les provinces de la Puissance, excepté celle de Québec où, dans certains cas, le Code de Procédure admet l'appel. Il eut été bien étrange de déclarer que l'appel dans ces causes n'aurait lieu que du jugement de la plus haute Cour de dernier ressort, quand il était certain que ces causes n'étaient pas susceptibles d'y être portées. Pour donner à cette clause une pareille signification, il faudrait donc supposer que le parlement qui a donné l'appel sans condition, en a cependant sous-entendu une, qui détruirait son œuvre : c'est-à-dire, que l'appel à la Cour

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Suprême n'aurait lieu que si une loi locale rendait ces causes appelables à la plus haute Cour provinciale afin qu'elles puissent parvenir jusqu'ici. Mais pourquoi supposer sans raison une condition si contraire au texte de la loi ? Le droit du parlement fédéral de rendre ces causes appelables, nonobstant toute législation au contraire existant alors dans les provinces, n'étant pas douteux, il me semble que cette disposition devrait recevoir son plein et entier effet.

Les procédures mentionnées dans la section 23, étant de la nature des appels, comme appartenant aux pouvoirs de surveillance et de révision exercés par les cours supérieures sur les juridictions inférieures, n'étaient pas, du moins pour la plupart d'entre elles, sujettes à l'appel, comme je l'ai dit plus haut. C'est aussi, sans doute, à raison de leur nature particulière qu'elles ont été soustraites à la nécessité d'un appel intermédiaire. Il était donc logique de dire simplement qu'il y aurait appel à la Cour Suprême, comme le dit si clairement la section 23.

Pour limiter l'effet de cette dernière section, l'Intimé s'appuie fortement sur la section 11e, fixant la signification de certaines expressions dans l'acte. Il prétend qu'elle a réglé cette question, en déclarant, que lorsque l'appel est donné, c'est toujours de la Cour de dernier ressort dans les provinces où le jugement a été rendu dans telle cause

On remarquera d'abord que dans cette clause, sans doute en vue de l'appel spécial donné par la section 23, l'on ne trouve pas comme dans la 17e le mot "highest," la plus haute Cour, il est seulement dit "la Cour de dernier ressort dans la province" Le mot "highest" a sans doute été retranché afin d'éviter la contradiction qu'il y aurait eu en déclarant d'un côté, qu'il y aurait appel des causes jugées en dernier ressort par les Cours Supérieures, et de l'autre que cet appel ne pourrait avoir

lieu que de la plus *haute* Cour de dernier ressort dans la province, à laquelle ces causes n'étaient pas alors susceptibles d'être portées. Le sens clair et évident de cette clause est que l'appel existe du jugement de la Cour qui prononce *en dernier ressort* par rapport à telle cause.

And when an appeal to the Supreme Court is given from a judgment in any case, it shall always be understood to be given from the Court of last resort in the province where the judgment was rendered in such case.

Il n'est pas ici question de la *plus haute* Cour, et ces termes doivent s'appliquer sans restriction à toute Cour siégeant en dernier ressort, pourvu qu'elle soit une Cour d'appel, ou une Cour de juridiction supérieure jugeant en dernier ressort.

Si toutefois les termes pouvaient avoir la signification que leur donne l'Intimé, on pourrait encore répondre que la section entière (la 11me) n'a pas d'application à la question sous considération.

En effet, il y est déclaré en termes formels que, à moins que " le *contraire* ne soit *prescrit*, ou que le *con-* " *texte n'exige* évidemment une autre interprétation," les expressions y mentionnées auront la signification qui leur est donnée. Les deux conditions qui rendent en certains cas cette clause d'interprétation inapplicable, ne se présentent-elles pas dans la question actuelle ?

Le *contraire* de la prétention que l'appel n'a lieu que de la plus haute cour de dernier ressort, n'est-il pas *prescrit* par la section 23 donnant l'appel sans condition. Le *contexte* de la même section ainsi que celui de la section 17 n'exige-t-il pas une autre interprétation que celle qui aurait pour effet d'anéantir le droit d'appel si clairement donné ? Si l'on admet que la section 11 doit contrôler l'appel donné par la section 23, n'en devrait-il pas être de même pour la section 49. Par cette section toute personne trouvée coupable de haute

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trahison, de félonie ou de délit devant une Cour Supérieure de juridiction criminelle, peut, lorsque la conviction a été confirmée par une cour de dernier ressort, en appeler à la Cour Suprême du jugement de confirmation.

La Cour d'Erreur et d'Appel d'*Ontario* qui est le plus haut tribunal de dernier ressort de cette province, n'a pas de juridiction d'appel en matières criminelles. Si l'on fait aux causes criminelles application de la dernière partie de la section 11, savoir : " et lorsque l'appel à la " Cour Suprême est permis à l'égard d'un jugement " dans aucune cause, il sera toujours sensé être permis " à l'égard du jugement de la cour en dernier instance " dans la province où le jugement a été rendu dans la " cause," il en résulterait qu'un appel ne pourrait pas avoir lieu à cette cour d'une conviction ou sentence prononcée par la Cour du Banc de la Reine de cette province, cette dernière n'étant pas la cour en dernière instance dans la province d'*Ontario*. Est-ce à dire que pour cette raison l'appel donné par la section 49 ne pourrait pas avoir lieu ? En faisant ainsi application de la clause d'interprétation, l'on détruirait une des dispositions les plus importantes de l'acte. Mais je ne pense pas qu'une telle interprétation serait admise. On répondrait à cette objection que la Cour du Banc de la Reine est une Cour Supérieure et en même temps une cour de dernier ressort dans la province pour les causes criminelles, et l'appel serait sans doute admis. Le même argument, s'il est valable dans ce cas, est également applicable à celui dont il s'agit. La Cour Supérieure de la province de Québec est, comme l'indique sa dénomination, une cour supérieure de première instance, en même temps qu'une cour de dernier ressort en certains cas, comme en matières municipales, d'après les arts. 1033 et 1115 du Code de P. C.

quelque manière que j'envisage la question, je

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ne puis trouver la confirmation des prétentions de l'Intimé dans la sec. 11e à laquelle, suivant moi, l'on donne une interprétation trop rigoureuse et une portée qu'elle ne devrait pas avoir. Ma manière de voir à ce sujet est appuyée sur les autorités suivantes :

Regina vs. *the Justices of Cambridgeshire ; Regina* vs. *the Justices of Shropshire. Regina* vs. *the Justices of Gloucestershire.* (1).

Dans ces causes lord *Denman*, à la page 491, s'exprime ainsi sur l'effet des clauses d'interprétation :

But we apprehend that an interpretation clause is not to receive so rigid a construction that it is not to be taken as substituting one set of words for another, nor as strictly defining what the meaning of the word must be under all circumstances. We rather think it merely declares what persons may be comprehended within that term, when the circumstances require that they should.

De plus, d'après les règles d'interprétation, la sec. 23 contenant une disposition particulière ne peut pas être contrôlée par la disposition générale de la sec. 11 :—

A particular enactment, says Maxwell, must prevail over a general enactment in the same statute. The general enactment must be taken to affect only the other parts of the statute to which it may properly apply.

Cette section (23me) n'est aucunement en contradiction avec l'esprit de l'acte, et ne peut avoir l'effet d'en rendre aucunes dispositions incompatibles, ni d'en détruire les effets. Elle peut exister sans affecter aucune des dispositions de l'acte, pas même la section 11me qui contient la déclaration spéciale qu'elle ne s'applique pas dans le cas où le sens de l'acte ne s'y prête pas.

En résumé, la sect. 23 me paraît avoir un sens très clair : elle donne le droit d'appel dans des causes où la loi provinciale ne l'admettait point. Frappé des développements considérables des affaires municipales dans ces dernières années, surtout depuis que les corporations se sont engagées dans les entreprises de chemins de

(1) 7 Ad. & E. 480.

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fer pour bien des millions, le parlement fédéral a sans doute pensé qu'il était de l'intérêt public, de soumettre à la juridiction d'appel de cette cour les jugements des cours de 1ère instance décidant ces affaires en dernier ressort. Le pouvoir exercé de cette manière n'étant pas contestable suivant moi, je suis d'opinion que l'on doit donner effet à la sec. 23, en recevant l'appel en cette cause. La majorité de la cour en décide autrement.

HENRY, J.:—

In this case, a motion was heard to dismiss the appeal, on the ground that it was not a case within the meaning of the Act providing for appeals to this Court.

It is an appeal from the decision of a Judge of the Superior Court in the Province of *Quebec*, in a case of *mandamus* before him, to compel the appellant to sign his name as warden of the Municipal Council of the first division of *Rimouski* to certain acts and deliberations of the Council, in accordance with his duty as such warden, and which he refused to do. There was a decision for costs only against him. The judgment was against him on the merits, but, as the appellant had, in the interim between the application for the *mandamus* and the hearing, done what the *mandamus* would have required him to do, no order for it was made; but the appellant was condemed to pay the costs of the application. From that judgment an appeal was first had to the Court of *Queen's* Bench, in appeal, but that Court properly, I think, decided there was no appeal thereto. The appeal to this Court was consequently taken.

A question might be raised as to the power of the Dominion Parliament to provide for an appeal, under such circumstances, to this Court. I will first endeavor to dispose of that question.

By the provision of the *British North America Act*, 1867, sec. 101, "The Parliament of *Canada* is given authority," from time to time, "to provide for the constitution, maintenance and organization of a general Court of Appeal for *Canada*." The right to "provide for the Constitution" of the Court without any terms of limitation, must, in my opinion, confer upon the Parliament of *Canada* the exclusive power of providing for appeals to this Court, from the highest to the lowest Courts in the Dominion; but, of course, in such a way as not to interfere with the procedure in the several Provinces, which is given for regulation to the Local Legislatures. No Act of the Parliament of *Canada* can affect the powers of the Local Legislatures in regard to appeals from one Court to another in any Province, but, when not so affecting such appeals, the Parliament of *Canada*, I hold, had, and has, the right to decide what cases shall come to this Court from the judgment or decision of any other Court.

Having disposed of that question, we must next enquire whether, by what Parliament has enacted, an appeal lies to the Court in the present, and similar cases.

Sections 11, 17 and 23 are those by which, it is said, we must be governed. Section 17 provides for the cases in which an appeal shall lie. It enacts thus: "Subject to the limitations and provisions *hereinafter* made, an appeal shall lie to the Supreme Court from all final judgments of the Court of final resort, whether such Court be a Court of Appeal or of original jurisdiction, now or hereafter to be established in any Province of *Canada*, in cases in which the Court of original jurisdiction is a Superior Court * * * And the right to appeal in civil cases given by this Act shall be understood to be given in such cases only as are mentioned in this section, except Exchequer cases, and cases of *mandamus*, *habeas corpus*, or municipal by-laws, *as hereinafter provided*."

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Section 23 contains the only provisions to which the terms "*hereinafter*" and "*as hereinafter provided*" can be applied. Section 17 cannot embrace the provisions of section 11, for they are in reference to section 17 neither "*hereafter*" nor "as *hereinafter* provided." Section 17 in its last clause clearly exempts from its own operation "Exchequer cases, and cases of *mandamus*, *habeas corpus*, or municipal by-laws," and in so many words says that in all those cases, *as provided for in section* 23, there shall be an appeal. What then does section 23 provide? "An appeal shall lie to the Supreme Court *in any case of proceedings* for or upon a writ of *habeas corpus* not arising out of a criminal charge, and in any case of proceedings for or upon a writ of *mandamus*, and in any case in which a by-law of a municipal corporation has been quashed by rule of Court, or the rule for quashing it has been refused after argument."

As I said before, from the stand point of section 17 we are told to look to section 23; and to invert our vision to section 11, would be looking backwards for the light we are ordered to look forwards for; we would, in fact, be looking toward the west for sunrise. If, however, we did look at section 11, we would find its provisions do not affect the construction we should put upon sections 17 and 23, for by its terms the enactments in sections 17 and 23 are clearly excluded. It commences thus: "Unless it is otherwise provided, or the context manifestly requires another construction," certain words therein mentioned shall have a prescribed meaning, and the section ends with these words: "and when an appeal to the Supreme Court is given from a judgment in any case it shall always be understood to be given from the court of last resort in the province where the judgment was rendered in such case." Were it not for the opening expressions used in the first part of that section, it would be in direct opposition to the

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provisions of sections 17 and 23, but by them the provisions of those sections at variance with those of section 11 are to prevail, because by them it is without question "otherwise provided," and "the context manifestly requires another construction." Under section 23 there must of course be a judgment, order, or decision to appeal from, but, when there is, that section provides for an appeal to this Court. In regard to the proceeding for or upon a writ of *mandamus*, the section makes no limitation; but in the case "in which a by-law of a municipal corporation has been quashed *by rule of Court*, or the rule for quashing it has been refused after argument," the appeal is, as regards a municipal by-law, on conditions thus stated. It is allowed only in one case where the by-law has been quashed by rule of Court, or the rule for quashing it *has been refused after argument.* No such limitation as in the latter case is provided in regard to proceedings for or upon a writ of *habeas corpus* or writ of *mandamus.* I feel bound to conclude, from a careful study of the whole case, that an appeal lies in the case in question to this Court, and that our judgment on the motion to quash it should be for the appellant.

TASCHEREAU, J.:—

This case is before us on a motion to quash the appeal. *Marquis*, the respondent, sued out a writ of *mandamus* against the defendant, (appellant,) on the ground that the said appellant had, as warden of the County of *Rimouski*, illegally refused to sign certain proceedings of the County Council, in which he, the plaintiff, had an interest. The writ was allowed by a Judge in Chambers, and made returnable before him in Chambers, and the whole of the proceedings, including the judgment complained of, took place before a Judge in Chambers, sitting in vacation, under sections 10, 23 *et*

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seq. of the *Code of Procedure*. By this judgment, the defendant (appellant) was declared to have illegally acted, in refusing to sign immediately the proceedings in question, but as it appeared that, since the return of the said writ, he had signed them, he was condemned only in the costs of the proceedings. The defendant appealed from this judgment to the Court of Queen's Bench, but this appeal was dismissed on motion, as by article 1033 of the *Code of Procedure* no appeal is allowed on *mandamus* in municipal matters. This judgment is reported (1). It was undoubtedly correct, and it can hardly be seen how the defendant could have brought such a case before the Court of Queen's Bench in the face of the article of the Code, and the constant jurisprudence of the Courts in the matter (2).

He now admits this error, and appeals to this Court, not from the judgment of the Court of Queen's Bench, dismissing his appeal, but from the judgment given against him at *Rimouski* by a Judge in Chambers, as just mentioned. We have now to determine whether the appellant has an appeal to this Court from this last mentioned judgment.

Three clauses of the Supreme Court Act have to be examined on this question : the eleventh (11th), seventeenth (17th) and twenty-third (23rd). The eleventh, which is the interpretation clause of the Act, reads as follows :

> Unless it is otherwise provided, or the context manifestly requires another construction, the following words and expressions, when used in this Act with reference to proceedings under it in appeal, shall have the meaning assigned to them respectively.
>
> The expression "the Court," means the Supreme Court ;" and the expression "the Court appealed from," means the Court from which the appeal has been brought directly to the Supreme Court, whether such Court be a Court of original jurisdiction, or a Court of Error

(1) 3 Q. L. R. 335.

(2) See *Ouimet* v. *Corporation of Compton*, 15 L. C. Jur. 258; *Fiset* v. *Fournier*, 3 Q. L. R. 334, and cases there cited.

and Appeal; and when an appeal to the Supreme Court is given from a judgment in any case, it shall always be understood to be given from the Court of last resort in the Province where the judgment was rendered in such case.

The 17th clause is in the following words:

Subject to the limitations and provisions hereinafter made, an appeal shall lie to the Supreme Court from all final judgments of the highest Courts of final resort, whether such Court be a Court of Appeal or of original jurisdiction, now or hereafter established in any Province of *Canada*, in cases in which the Court of original jurisdiction is a Superior Court; provided that no appeal shall be allowed from any judgment rendered in the Province of *Quebec* in any case wherein the sum or value of the matter in dispute does not amount to two thousand dollars; and the right to appeal in civil cases given by this Act shall be understood to be given in such cases only as are mentioned in this section, except Exchequer cases and cases of *mandamus*, *habeas corpus* or municipal by-laws, as hereinafter provided.

And the 23rd clause enacts that:

An appeal shall lie to the Supreme Court in any case of proceedings for or upon a writ of *habeas corpus* not arising out of a criminal charge, and in any case of proceedings for or upon a writ of *mandamus*, and in any case in which a by-law of a municipal corporation has been quashed by rule of Court, or the rule for quashing it has been refused after argument.

The contention of the appellant is that this last clause entitles him to his present appeal.

Certainly if it was to be applied as it reads alone, and independently of the other parts of the Statute, the appellant would be well founded in his contention. But if, on the one hand, a well settled rule on interpretation of Statutes is, that the interpretation clause is not to be strictly construed, on the other hand, it is a rule equally clear and well established that the intention of the law giver is to be deduced from a review of the whole and of every part of the Statute, taken and compared together (1). The interpretation clause must receive a liberal construction, it is true, but it is equally true, in my opinion, that it cannot be altogether

(1) Potter's Dwarris on Statutes p. 110.

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thrown aside in the interpretation of a particular subsequent enactment. Quite the contrary, it overrides the whole Statute, and, in the very terms of section 11 of the Supreme Court Act, unless *it is otherwise provided, or the context manifestly requires another construction*, the meaning given to a particular word in the interpretation clause attaches to that word throughout the whole Statute.

Now, this section 11 positively enacts that, when an appeal to the Supreme Court is given from a judgment *in any case*, it shall *always* be understood to be given from the Court of last resort in the Province where the judgment was rendered in such case. On one part of his argument at the hearing before us, the appellant, far from denying the bearing of section 11, or section 23, invoked it, if I understood him well, but argued that, in his case, the judgment he appeals from is the judgment of the Court of last resort, *quoad* him, as he had no appeal to the Court of Queen's Bench. But it seems to me that the words of this section 11 clearly say that no appeal is given *in any case*, except from the Court of last resort in each Province. The words "whether such Court be a Court of original jurisdiction or a Court of appeal," in this section and in section 17, cannot be interpreted so as to give an appeal either from the Court of original jurisdiction or from the Court of Appeal in the Provinces where there are Courts of Appeal; but, it seems to me, only mean that, in the Provinces where there are no Courts of Appeal, the appeal to the Supreme Court shall lie from the court of original jurisdiction, (provided the court of original jurisdiction is a Superior Court,) and in the provinces where there exist Courts of Appeal, the appeal to this Court shall lie from that Court of Appeal; in all cases giving an appeal to this Court only from the Court of *last resort* in each Province. This distinction was most wisely made in the Act, as

it is well known that in *New Brunswick*, *Nova Scotia*, and some of the other Provinces, there are no Courts of Appeal. Cases come before us directly from the Courts of original jurisdiction, because for such Provinces they are the Courts of last resort. But is the appellant here, putting the question in the very words of section 11, appealing from a judgment given by the Court of last resort in the Province where the judgment was rendered in his case? Clearly not. The Court of last resort in the Province of *Quebec* is the Court of Queen's Bench; he appeals from the Superior Court.

The appellant, in another part of his argument, tried to get rid of this sec. 11 of the Act by relying entirely on sec. 23, and reading it by itself, and as not ruled by the said sec. 11. I have already laid down the clear, fair and well established principle that the intention of the law-giver is to be deduced from a view of the whole and of every part of a Statute, taken and compared together. "It is an elementary rule," says *Maxwell*, "that construction is to be made of all the parts together, and not of one part only by itself" (1). Now, taking the whole of this Act together, it appears to me that, even in criminal cases, the intention of the Dominion Parliament has been to give an appeal to this Court from the Courts of last resort in each Province only, and from no other Courts. As I have said already, if the Court of last resort in a Province is a Court of original jurisdiction, then the appeal is given from that Court of original jurisdiction; if, on the contrary, in another Province, the Court of last resort is a Court of Appeal, then the appeal to the Supreme Court is given from that provincial Court of Appeal.

And what would be the consequences for the Province of *Quebec*, if we were to give effect to this 23rd clause, as it reads by itself and without reference to

(1) Maxwell on Statutes, p. 25.

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sec. 11 of the Act? Virtually, to abolish the Court of Review and the Court of Appeal in all cases of *habeas corpus* (not arising out of a criminal charge), and in all cases of *mandamus*, in other than municipal matters. In such cases, under the Provincial laws, there is an appeal to both these Courts under certain restrictions (1).

Now, if section 23 of the Supreme Court Act is to be construed independently of sec. 11, in all these cases an appeal would be given to the Supreme Court directly from the Court of original jurisdiction, without obliging the parties to go to review or to appeal in the Province. It may be doubted, if the Dominion Parliament has such a power: whether it can in any case take away directly or indirectly the jurisdiction that each Local Legislature chooses to give to its own Provincial courts; whether under section 101 of the *B. N. A. Act* it has the power to give an appeal to the Supreme Court from any other but the Court of last resort in each Province. But I need not enquire into this; in my opinion, it has not done so in section 23 of the Supreme Court Act, because I hold that this section is ruled by section 11, and that, under both, no appeal to this Court lies in any case except from the Court of last resort in each Province.

Another anomalous consequence of the interpretation that the appellant gives to this clause would be that, in the Province of *Quebec*, an appeal to this Court would be in some cases from the Circuit Court. For, this section 23, gives also an appeal to this Court in all cases in which a by-law of a municipal corporation has been quashed by rule of Court, or the rule for quashing it has been refused after argument. Now, in the Province of *Quebec*, under the municipal codes, all such cases are brought before the Circuit Court, and, if the appel-

(1) *Barlow* v. *Kennedy*, 17 L. C. Jur. 253; *Reg.* v. *Hull*, 3 Q. L. R. 136; Art. 1033, C. C. P.

lant's contention was admitted, could be appealed from that Court here. By holding that there is no appeal except from the Court of last resort in each Province, we avoid making the Statute give an appeal to this Court direct from the *Quebec* Circuit Court, which I believe was not the intention of the Parliament to give. Then, with this interpretation, in cases concerning the quashing of municipal by-laws, as in *mandamus* and *habeas corpus* in civil matters, and all other cases, the parties have to go to the local Court of Appeal before coming here (1).

"Before adopting any proposed construction of a passage susceptible of more than one meaning," says *Maxwell*, on Statutes (2), "it is necessary to consider the effects or consequences which would result from it, for they do very often point out the genuine meaning of the words. There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided."

Applying these remarks to this case, and believing that it was not the intention of Parliament to give in any case an appeal to this Court directly from the Circuit Court of the Province of *Quebec*, I cannot read this section 23 so as to have an effect which Parliament did not intend.

Another possible objection to this appeal is that it is from a Judge in Chambers, and not from the Superior Court. In certain cases, an appeal to the Court of Queen's Bench or to the Court of Review, is given from a Judge in Chambers, but only when a special enactment allows it. So it was held by the Court of Queen's Bench, in *Beliveau* v. *Chevrefils* (3); see, also,

(1) *Rolfe* v. *Corporation of Stoke*, Queen's Bench, *Montreal*, March, 1879, not reported; *McLaren* v. *Corporation of Buckingham*, 17 L. C. Jur. 53.

(2) P. 65.

(3) 1 Q. L. R. 209.

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Blanchard v. *Miller* (1). Now, *quoad* appeals to the Supreme Court, there is no such enactment.

I am of opinion that the respondent's motion must be granted, and the appeal quashed with costs.

THE CHIEF JUSTICE concurred with STRONG and TASCHEREAU, J. J.

Appeal quashed with costs.

Solicitor for appellant: *John Gleeson.*

Solicitor for respondent: *J. N. Pouliot.*