1901

*Mar. 5.
*Mar. 8.

L'ASSOCIATION ST. JEAN-BAPTISTE DE MONTRÉAL (DEFENDANT) ..... } APPELLANT;

AND

HENRI ALEXANDRE A. BRAULT (PLAINTIFF) ..... } RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN REVIEW, AT MONTREAL.

Appeal—Jurisdiction — Constitutional law — Legislative powers—Appeals from the Court of Review—54 & 55 V. c. 25, s. 3, (D.)—B. N. A. Act, 1867, s. 101 — Illegal consideration of contract—Lottery—Corelative agreements.

The power of the Parliament of Canada under sec. 101 of the British North America Act, 1867, respecting a general court of appeal for Canada is not restricted to the establishment of a court for the administration of laws of Canada and, consequently, there was constitutional authority to enact the provisions of the third section of the Dominion Statute, 54 & 56 Vict. ch. 25, authorising appeals from the Superior Court, sitting in review, in the Province of Quebec.

On the merits, this appeal was allowed with costs, Girouard J. dissenting, the decision in *L'Association St. Jean-Baptiste de Montreal* v. *Brault* (30 Can. S. C. R. 598) being followed.

APPEAL from the judgment of the Superior Court, sitting in review, at Montreal, affirming the judgment of the Superior Court, District of Montreal, which maintained the plaintiff's action with costs.

The questions at issue in this case arose out of the transactions that gave rise to the former appeal by the present appellant against the respondent (1), the action having been brought by the respondent to recover

* PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

(1) 30 Can. S. C. R. 598.

$3,114.39 for a second instalment of interest on the $30,000 mentioned in the statement of that case, under the deed of 19th March, 1892. Plaintiff recovered judgment in the trial court and this judgment was affirmed by the Court of Review, on 5th May, 1900, Doherty J. dissenting. The defendant appealed to the Supreme Court of Canada on the same grounds as were asserted in the former appeal. On the appeal coming on for hearing, it was admitted by counsel that the questions at issue, upon the merits, were precisely similar to those raised on the former appeal, except that the successful ground of defence there urged for the first time on appeal to the Supreme Court had been taken in the courts below, and there was therefore no argument made on the merits on behalf of either party.

The respondent, however, moved to quash the appeal on the ground that the provisions of the Dominion Statute, 54 & 55 Vict. ch. 25, sec. 3, which authorised the appeal from the judgment of the Court of Review were unconstitutional and *ultra vires* of the Parliament of Canada.

Belcourt K.C., for the motion, cited *Danjou* v. *Marquis* (1); *Macdonald* v. *Abbott* (2); *Grand Trunk Railway Co.* v. *The Credit Valley Railway Co.* (3) on the proposition that, as the provincial legislature had declared the judgment of the Court of Review where it has affirmed the judgment of the trial court final and conclusive between the parties, there could be no power in the Parliament of Canada to permit an appeal.

Béïque K.C., contra, referred to *Clarkson* v. *Ryan* (4).

The judgment of the court was delivered by:

(1) 3 Can. S. C. R. 251.
(2) 3 Can. S. C. R. 278.
(3) Doutre, Constitution of Canada, p. 337.
(4) 17 Can. S. C. R. 251.

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TASCHEREAU J.—This is an appeal from the Court of Review. The respondent moves to quash it on the ground that the enactment of the Dominion Parliament passed in 1891, giving the right to appeal from that court is unconstitutional and *ultra vires*. This motion cannot prevail.

We have entertained a number of such appeals during the ten years that the enactment has been in force without any objection having been taken to our jurisdiction and it is too late now to ask us to decree that in all those cases our judgments are complete nullities.

Section 101 of the British North America Act, 1867, enacts that notwithstanding the exclusive jurisdiction given to the provincial legislatures over civil rights, the Parliament of Canada has the power to provide for the constitution, maintenance and organisation of a general court of appeal for Canada, without restricting the power, as it does for additional courts of first instance, to the administration of laws of Canada.

The respondent would contend that all the appeals heard in this from all over the Dominion, since its creation in 1875, in cases not governed by the federal laws, were determined without jurisdiction. For, if parliament had not the power to authorise an appeal in such cases from the Court of Review, in Quebec, it had not the power to authorise it from the courts of final jurisdiction in the other provinces. Then we have often held that the provincial legislatures have not power to restrict in any way the jurisdiction of this court or to add to it. The Quebec Legislature had not the power to authorise an appeal to this court from the Court of Review, or from any of its courts. That being so, it follows that the Dominion parliament must have that power.

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The motion is dismissed with costs, and the appeal is allowed with costs.

GIROUARD J. dissented from the judgment of the majority of the court upon the merits for reasons already stated by him in his judgment in the former case of *L'Association St. Jean-Baptiste de Montréal* v. *Brault* (1).

Motion to quash dismissed with costs; appeal allowed with costs.

Solicitors for the appellant: *Béïque, Lafontaine, Turgeon & Robertson.*

Solicitors for the respondent: *Lamothe & Trudel.*