

1895
 *Oct. 1.
 *Dec. 9.

THE CORPORATION OF THE
 CITY OF STE. CUNÉGONDE DE
 MONTREAL (DEFENDANT).. .. .

APPELLANT;

AND

J. A. GOUGEON AND OTHERS }
 (PLAINTIFFS)

RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

*Appeal—By-law—Petition to quash—Appeal to Court of Queen's Bench—
 40 V. c. 29 (P.Q.)—53 V. c. 70 (P.Q.)—Judgment quashing—Appeal
 to Supreme Court from—R.S.C. c. 135, s. 24 (g).*

Sec. 439 of the Town Corporations Act (40 Vic. c. 29 P.Q.) not having
 been excluded from the charter of the city of Ste. Cunégonde (53
 Vic. c. 70) is to be read as forming a part of it and prohibits an
 appeal to the Court of Queen's Bench from a judgment of the
 Superior Court on a petition to quash a by-law presented under
 sec. 310 of said charter.

Where the Court of Queen's Bench has quashed such an appeal for
 want of jurisdiction no appeal lies to the Supreme Court of
 Canada from its decision.

APPEAL from a decision of the Court of Queen's
 Bench for Lower Canada (appeal side) quashing for
 want of jurisdiction an appeal by the corporation of
 Ste. Cunégonde from a judgment of the Superior Court
 on a petition to quash a by-law of the city.

The proceedings in this case were taken by the re-
 spondents who presented a petition to the Superior
 Court, under sec. 310 of the charter of the city of Ste.
 Cunégonde, asking to have a by-law of the city annulled
 so far as it affected the petitioners. The Superior Court
 granted the prayer of the petition and the corporation
 took an appeal to the Court of Queen's Bench which

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne,
 Sedgewick, King and Girouard JJ.

appeal was quashed by the court which held that sec. 1895
439 of the Town Corporations Act (40 Vic. ch. 29, R.S. THE
Q. art. 4614) not having been excluded from the charter CITY OF STE.
of the city must be read as forming a part of it and CUNÉGONDE
such section prohibited an appeal from any judgment v.
of the Superior Court respecting municipal matters. GOUGEON.
The corporation then appealed to this court.

Charbonneau for the respondent moved to have the appeal quashed.

There being no judgment of the Court of Queen's Bench, the court of final resort in the province, on the merits of the case no appeal lies to this court. R.S.C. ch. 135 sec. 24 (g). *Danjou v. Marquis* (1).

This case is not similar to *Webster v. The City of Sherbrooke* (2), where the proceedings were to quash the by-law *in toto* but comes rather within *Bell Telephone Co. v. The City of Quebec* (3), and *City of Sherbrooke v. McManamy* (4).

Under the statute law of Quebec the Court of Queen's Bench clearly had no jurisdiction to entertain an appeal.

Beïque Q.C., for the appellant, contra. The Court of Queen's Bench should have heard the appeal. The provisions of the charter of Ste. Cunégonde cannot be controlled by a general municipal act except by express words. *Rolfe v. The Corporation of Stoke* (5).

We cannot be deprived of our appeal because the court of final resort wrongfully held that it was without jurisdiction. In *Danjou v. Marquis* (1), the case never went to the Court of Queen's Bench.

The judgment of the court was delivered by :

THE CHIEF JUSTICE:—The respondents, who are municipal electors of the City of Ste. Cunégonde, by a

(1) 3 Can. S.C.R. 251.

(3) 20 Can. S.C.R. 230.

(2) 24 Can. S.C.R. 52.

(4) 18 Can. S.C.R. 594.

(5) 24 L.C. Jur. 213.

1895
 THE
 CITY OF STE.
 CUNÉGONDE
 v.
 GOUGEON.
 —

petition to the Superior Court ask to have annulled by-law 73 passed by the City Council in regard to the imposition of taxes for the construction of a certain drain, so far as it affects the petitioners and their properties.

The Chief
 Justice.
 —

This petition was presented pursuant to article 310 of the city's special Act of incorporation (53 Vic. ch. 70) which is as follows :

Any municipal elector may, in his own name, by a petition presented to the Superior Court, demand and obtain, on the ground of illegality, the annulment of any by-law, resolution, assessment roll or apportionment; but the right of demanding such annulment is prescribed by two months from the date of the passing or completion of such by-law, resolution, assessment roll, or apportionment in the terms of article 8; and after that delay every such by-law, resolution, assessment roll or apportionment shall be considered valid and binding for all purposes whatsoever, provided the subject matter thereof be within the competence of the corporation.

The Superior Court (Doherty J.) annulled the by-law upon certain grounds which, in view of the way in which the matter comes before this court, it is unnecessary to specify.

The City of Ste. Cunégonde then appealed to the Court of Queen's Bench and that court, holding that it had no jurisdiction to entertain the appeal, quashed it with costs. The *considérants* of the judgment of the court are as follows :

Considering that the procedure in this cause was commenced by petition to the Superior Court under the special provision of section 310 of the charter of the said City of Ste. Cunégonde, 53 Vic. ch. 70 (Que.).

And considering that section 439 of the Town Corporations Act, 40 Vic. ch. 29, which is applicable to the said special Act of incorporation of the said City of Ste. Cunégonde, expressly prohibits any appeal from a judgment of a judge of the Superior Court in procedure taken under said Act.

The appellants thereupon applied to the registrar in chambers for leave to give security in appeal under

section 46 of the Supreme and Exchequer Courts Act, which application was granted, the registrar being of opinion that the nature of the proceeding was similar to the one taken in *Webster v. Sherbrooke* (1), and not to be distinguished from it. the petition in that case having been filed under sec. 4389 R. S. P. Q. which is identical in words with the first part of sec. 310 of the Act of incorporation of the appellants, and that therefore, so far as the mere right of appealing to the Supreme Court was concerned, the case came within sec. 24 (g) of ch. 135 R. S. C.

1895
THE
CITY OF STE.
CUNÉGONDE
v.
GOUGEON.
The Chief
Justice.

Sec. 4389 R. S. P. Q. is as follows :

Any municipal elector may, in his own name, by a petition presented to the Superior Court or to one of the judges thereof, demand and obtain, on the ground of illegality, the annulment of any by-law of the Council, with costs against the corporation.

But the respondents have now moved to quash the appeal, 1st. because the appeal will not lie under sec. 24 (g) of the Supreme and Exchequer Courts Act, and 2nd, because the Court of Queen's Bench was correct in holding that it had no jurisdiction, and that therefore no appeal would lie to this court, inasmuch as all appeals from the province of Quebec must, with the exception only of certain appeals from the Court of Review specially provided for, come to this court from the Court of Queen's Bench, and be appeals in which that court at least entertained jurisdiction, and not in which, upon good and valid grounds, it has declined jurisdiction.

I think the motion should be granted upon this second ground, which was one with which the registrar very properly did not deal.

The question to be decided is : Was the Court of Queen's Bench right in holding article 439 of 40 Vic. ch. 29 applicable to the special Act of incorporation of the appellants ?

(1) 24 Can. S. C. R. 52.

1895 That article is as follows :

THE
CITY OF STE. CUNÉGONDE
v.
GOUGEON.

No appeal shall lie under the provisions of this Act from any judgment rendered by any judge of the Superior Court, respecting municipal matters.

Section 1 of that Act provides as follows :

The Chief Justice.

The provisions of this Act shall apply to every town, corporation or municipality which shall hereafter be established by the legislature of this province, and they shall constitute part of the special Act relative to such town, so as to form with it one and the same Act, unless they be expressly modified or excepted.

And section 441 says :

This Act may apply to city corporations which shall in future be incorporated ; and in such case the word "town" shall be replaced by the word "city" every time that the meaning of this Act, thus applied, shall require it.

These provisions were re-enacted in the Revised Statutes of the province of Quebec as follows :

Art. 4178. The provisions of this chapter apply to every town corporation or municipality, established by the legislature of this province, and unless expressly modified or excepted they constitute part of its charter.

The provisions thereof may also be applied to city corporations ; and in such case the word "town" shall be replaced by the word "city," whenever the meaning of this chapter, thus rendered applicable, shall require it.

4179. For any of the provisions of this chapter not to be incorporated in the charter, it must be expressly declared that such provisions, specifying them by their numbers, shall not form part thereof.

Art. 4614 (the article respecting appeals) is as follows :

No appeal lies under the provisions of this chapter, from any judgment respecting municipal matters rendered by any judge of the Superior Court.

Mr. Justice Hall, in delivering the judgment of the Court of Queen's Bench says :

Section 439 of that Act (The Town Corporations Act 4614 R.S.P.Q.) not having been excluded from the Ste. Cunégonde charter is therefore to be read as forming a part of it. The procedure in this case, viz., the petition to the Superior Court by municipal electors, is not a com-

mon law procedure commenced by an ordinary writ of summons, but is peculiar to the special charter to the city, and must be governed therefore by the clause of the same charter which formally and unequivocally prohibits a right of appeal from a judgment of the Superior Court rendered in a procedure thus commenced.

1895

THE
CITY OF STE.
CUNÉGONDE
v.

GOUGEON.

—
The Chief
Justice.
—

This I adopt as a correct statement of the law applicable to the case. As has been correctly contended by the counsel for the respondents, inasmuch as under the Supreme and Exchequer Courts Act and amendments thereof, no appeals can be brought to the Supreme Court from any court in the province other than the Court of Queen's Bench, with the exception of appeals from the Court of Review in certain cases, which do not include the present, and as the appeal in the present case did not lie to the Court of Queen's Bench, and that court properly refused to entertain jurisdiction therein, it follows that no appeal will lie to this court.

That the provincial legislature may limit appeals to the Court of Appeal of the province must be admitted, although the effect of so doing may be take away in such cases a further appeal to the Supreme Court. And if called upon to express any opinion on the point, I should say that it is not to be regretted that a limit should be placed on appeals in municipal matters of the kind in question here.

The motion to quash is granted with costs.

Appeal quashed with costs.

Solicitors for the appellant: *Adam & Plourde.*

Solicitor for the respondents: *N. Charbonneau.*