MONTREAL TRAMWAYS CO. ..... APPELLANT;

AND

MARY OLIVE CREELY, ES-QUAL, ET AL (PETITIONERS) ..... RESPONDENTS.

1948
*Dec. 13
1949
*Feb. 1

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Appeal—Interlocutory judgment—Jurisdiction—Final judgment—Substantive right—Judicial proceedings—Amount in controversy—Art. 46 C.C.P.—Supreme Court Act R.S.C. 1927, c. 35, ss. 2(b) (e), 39(a).

In an action claiming $250,000 for fatal injuries resulting from a collision between a tramway and an automobile, the judgment of the Court of Appeal that it is without jurisdiction to hear an appeal from the decision of the trial judge dismissing a motion for non-suit made at the close of plaintiff's case on the ground that there was not sufficient evidence for the jury to find a verdict in favour of plaintiff, is a final judgment within section 2(*b*) of the Supreme Court Act; and the amount in controversy is the amount of the original claim.

MOTION to quash for want of jurisdiction.

J. G. Ahern K.C. for the motion.

L. E. Beaulieu K.C. contra.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is a motion to quash for want of jurisdiction.

The action came on for hearing before Tyndale C.J. and a jury on the 23rd and 24th days of February, 1948. At the close of the plaintiff's case the defendant moved that the action be dismissed on the ground that there was not sufficient evidence for the jury to find a verdict in the plaintiff's favour. The motion was dismissed by the presiding judge.

*PRESENT: Rinfret C.J. and Taschereau, Rand, Estey and Locke JJ.

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As the defendant indicated its intention to appeal from that judgment, Tyndale C.J. told the jury that they might separate and that they would be called back to continue the hearing of the case if and when such appeal was disposed of.

The defendant then applied to one of the judges of the Court of King's Bench (Appeal Side) for leave to appeal to that Court from the decision of Tyndale C.J. (C.C.P., 1211).

The motion came on for hearing before St-Jacques J., who granted it; but the plaintiffs then moved the full Court to dismiss the appeal for want of jurisdiction, notwithstanding the permission granted by St-Jacques J.

The full Court granted the plaintiff's motion to quash the appeal to it on the ground that the judgment appealed from was interlocutory and that it did not fall within the provisions of Sec. 46, C.C.P., and that jurisdiction to deal with it could not be conferred upon the Court by a judge of that Court granting leave to appeal.

The defendant then appealed to this Court from this last mentioned judgment and the plaintiffs now move to quash for want of jurisdiction in this Court upon the ground that the judgment appealed from is not a final judgment, that the amount or value of the matter in controversy in the appeal does not exceed the sum of $2,000 (Sec. 39(*a*), Supreme Court Act), and that no special leave has been obtained from the Court of King's Bench (Appeal Side) for the Province of Quebec, or from this Court.

The only point decided by the judgment of the Court of King's Bench (Appeal Side) is that the Court was without jurisdiction to hear the motion for non-suit made by the defendant at the trial, that the judgment of the presiding judge dismissing that motion was interlocutory, and that it did not fall under any of the conditions required by Sec. 46, C.C.P., to make it susceptible of appeal, as it did not (1) decide in part the issues, (2) order the doing of anything which cannot be remedied by the final judgment, or (3) unnecessarily delay the trial of the suit.

The Court of King's Bench (Appeal Side) did not, therefore, pass on the merits of the motion for non-suit which was dismissed by Tyndale C.J.

In our view, this judgment of the Court of King's Bench (Appeal Side) comes within the definition of a final judgment in Sec. 2 (*b*) of the Supreme Court Act. The right of appeal asserted by the defendant, and which was allowed by St-Jacques J., is a substantive right in controversy between the parties in a judicial proceeding (Sec. 2 (*e*), Supreme Court Act).

The question raised by the defendant (appellant) concerns the jurisdiction of the Court of King's Bench (Appeal Side) to pass upon its motion for non-suit; and, by the judgment appealed from, that Court has finally deprived the defendant (appellant) of its substantive right to have that matter determined. (*Ville de St. Jean* v. *Molleur* (1) by Fitzpatrick C.J. at 153 to 157; *Bulger* v. *The Home Insurance Co.* (2); *The Cosgrave Export Brewery Co.* v. *The King* (3); *Montreal Tramways Co.* v. *Brillant* (4) and *Ballantyne* v. *Edwards* (5)).

In *The Grand Council of the Canadian Order of Chosen Friends* v. *The Local Government Board and the Town of Humboldt* (6), the matter in controversy was an order of the Local Government Board made under the provisions of the Local Government Board (Special Powers) Act. Embury J. had given leave to appeal against the order to the Court of Appeal for Saskatchewan. The latter court held that there was no right of appeal from the order of the Local Government Board in the premises. The situation was the same as in the present case, since the Grand Council had obtained leave to appeal from Embury J. and the Court of Appeal denied its jurisdiction, notwithstanding that leave had been given. In this Court jurisdiction was held to exist to decide whether the Court of Appeal was right in so holding and the case was heard on the point determined by the Court of Appeal.

In *The Provincial Secretary of the Province of Prince Edward Island* v. *Egan and The Attorney General of Prince Edward Island* (7), the Provincial Secretary had refused to issue a license to operate a motor vehicle to Egan who had been convicted of driving his motor vehicle while under the influence of intoxicating liquor. The Prince Edward

(1) (1908) 40 S.C.R. 139.
(2) [1927] S.C.R. 451.
(3) [1928] S.C.R. 405.
(4) [1929] S.C.R. 598.
(5) [1938] S.C.R. 392.
(6) [1924] S.C.R. 654.
(7) [1941] S.C.R. 396.

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Island Act was to the effect that in such a case the license was automatically suspended for twelve months with such conviction, and that "the Provincial Secretary shall not issue a license to any person during the period for which the license has been cancelled or suspended under this section."

From the refusal of the Provincial Secretary Egan appealed to a County Court judge, who allowed the appeal and ordered the issuance of a license. The Provincial Secretary appealed to the Supreme Court of Prince Edward Island *en banc*, which dismissed the appeal, holding that the County Court judge had jurisdiction to make the order and that there was no appeal therefrom. In this Court the appeal was allowed and the order of the County Court judge set aside. It was held that there was no right of appeal to the County Court judge from the refusal of the Provincial Secretary in the circumstances, that there was no provision authorizing such an appeal, that the order of the County Court judge was made without jurisdiction and that the Supreme Court of Prince Edward Island *en banc* should have so held and set aside the order.

It will be seen, therefore, that in the Egan case this Court entertained jurisdiction on the matter of the jurisdiction of the Supreme Court of Prince Edward Island *en banc*, even although, as happened there, it was held that the County Court judge himself had no jurisdiction to entertain the appeal from the refusal of the Provincial Secretary.

Reference might also be made to *Lord* v. *The Queen* (1), where the decision of the Court of Queen's Bench (Appeal Side) was reversed and the case was remitted to that Court to be there heard on the merits.

We might also refer to our recent decision in *Hartin et al* v. *May et al* (2).

Gatineau Power Co. v. *Cross* (3), a case cited by Counsel for respondent, was an expropriation matter. The Quebec Public Service Commission refused to give authority to the Gatineau Power Co. to expropriate Cross' property. This power was a matter of discretion for the Commission and the Court of Appeal merely decided that it could not interfere.

(1) 31 S.C.R. 165.
(2) [1944] S.C.R. 278.
(3) [1929] S.C.R. 35.

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Tremblay v. *Duke-Price Power Co.* (1), another case referred to by Counsel for the respondent, really turned merely on a matter of practice and procedure. The Court of King's Bench (Appeal Side), having decided under Sec. 1213 of the C.C.P. that the inscription in appeal had been abandoned, for that reason rejected the appeal. No question of the jurisdiction of that Court was involved.

From the reasons delivered in the present instance by the Court of King's Bench (Appeal Side) it follows that that Court only decided that it had no jurisdiction to hear the appeal which had been allowed by St-Jacques J., and it went no further.

We are of opinion that an appeal lies to this Court in such circumstances and that the amount or value in controversy is truly the amount or value of the original claim, i.e., the sum of $250,000.

For these reasons the respondent's motion to quash the appeal should be dismissed with costs.

Motion dismissed with costs.