

CASES
DETERMINED BY THE
SUPREME COURT OF CANADA
ON APPEAL

FROM
DOMINION AND PROVINCIAL COURTS

WILLIAM PEARCE.....APPELLANT;

AND

THE CITY OF CALGARY.....RESPONDENT.

ON APPEAL FROM THE DISTRICT COURT, DISTRICT OF
CALGARY, IN ALBERTA.

The Registrar in Chambers — Appeal — Jurisdiction—Assessment and taxation—Adjudication authorised by provincial authority—"Supreme Court Act," R.S.C., 1906, s. 41—Finality of provincial decision—"Court of last resort."

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*15 July.

- A provincial statute, providing that judgments of courts in the province on appeal from decisions of courts of revision in respect of assessments for taxation purposes shall be final and conclusive on the matters adjudicated upon thereby, does not circumscribe the appellate jurisdiction given to the Supreme Court of Canada in such matters by section 41 of the "Supreme Court Act," R.S.C., 1906, ch. 139. *Crown Grain Co. v. Day* (1908) A.C. 504 applied.
- A district court judge, in the Province of Alberta, adjudicating in matters concerning the assessment of property for municipal purposes under the provisions of the North-West Territories Ordinance No. 33, of 1893, as amended by the statutes of Alberta, ch. 9 of 1909, and ch. 27 of 1913, sec. 7, is a "court of last resort created under provincial legislation" within the meaning of section 41 of the "Supreme Court Act," R.S.C., 1906, ch. 139,

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and, consequently, an appeal from the decision lies to the Supreme Court of Canada when it involves the assessment of property at a value of not less than ten thousand dollars. *City of Toronto v. Toronto Railway Co.* (27 Can. S.C.R. 640) referred to as effete, *Canadian Niagara Power Co. v. Township of Stamford* (50 Can. S.C.R. 168) and *Re Heintze, Fleitman v. The King* (52 Can. S.C.R. 15) referred to.

MOTION before the Registrar in Chambers, to affirm the jurisdiction of the Supreme Court of Canada to entertain an appeal from the judgment of His Honour A. A. Carpenter, judge of the District Court for the District of Calgary, in Alberta, reducing the assessment of the property of the appellant by varying the decision in respect thereof by the Court of Revision of the City of Calgary.

The city assessor of the City of Calgary assessed real estate in the city belonging to the appellant, at a total value of \$236,595, which, on his appeal, pursuant to the provisions of the city charter, to the city council sitting as a court of revision, was reduced to \$201,107. On a further appeal to the district judge the assessment was further reduced to the sum of \$168,595 by the judgment from which an appeal is now sought to the Supreme Court of Canada direct from the decision of the district judge.

Crysler K.C. in support of the motion contended that the district court judge from whose decision, by provincial legislation, no appeal lay, was a "court of last resort" within the language of section 41 of the "Supreme Court Act," and that an appeal would lie from his decision to the Supreme Court of Canada.

Fisher, contra, urged (1) that the judge of the district court was "*persona designata*" and his decision was not the subject of an appeal, and (2) that the Alberta statutes gave an appeal from the district judge to the Supreme Court of the province and that

the present appeal should not have been taken until after such an appeal had been taken and disposed of.

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THE REGISTRAR.—This is an application to affirm the jurisdiction of the Supreme Court of Canada to entertain an appeal direct from the decision of the district judge of the District of Calgary, in Alberta. The facts are as follows:—

One William Pearce, the owner of property in Calgary, Alta., having appealed respecting the assessment of his property there from the decision of the court of revision to the judge of the district court, and being dissatisfied with the decision rendered on that appeal, now desires to appeal direct therefrom to the Supreme Court of Canada under the provisions of section 41 of the "Supreme Court Act." I have to determine whether or not there is jurisdiction in this court to hear such an appeal, there being involved the assessment of property of a value much in excess of \$10,000.

A charter was granted to the City of Calgary by an ordinance of the North-West Territories, chap. 33, of the Ordinances of 1893. By section 40 of that ordinance provision is made for assessment appeals by which the roll shall be revised by the city council as a court of revision. The decision of that court was declared to be final, subject to an appeal to the judge of the Supreme Court of the North-West Territories having jurisdiction in the City of Calgary; section 41 of the ordinance gave an appeal from this judge to the Supreme Court *en banc*.

In 1909, by chapter 9 of the statutes of Alberta, a general Act was passed applicable to all cities having a municipal charter by which an appeal from the court of revision was made to lie to the judge of the district

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court of the district in which the city or town affected was situated, but this statute made no reference to appeals to the Supreme Court *en banc* nor to section 41, sub-sec. 6, which gave such an appeal from the Supreme Court judge. In 1913, by chapter 27, sec. 7, of the statutes of Alberta, this sixth sub-section was struck out and section 41 was amended in the following manner. The section formerly provided that:—

if any person is dissatisfied with a decision of the Court of Revision he may appeal therefrom to the judge of the Supreme Court having jurisdiction in the City of Calgary.

By the amendment the following words were added, after the word "Calgary":—

and his decision shall be final and conclusive in all matters adjudicated upon

and, by the same Act, sub-section 6 of section 41, which provided for an appeal to the Supreme Court *en banc* was repealed. I take it that the effect of this legislation was to provide that, after 1913, assessment appeals from the court of revision had to be taken to the judge of the district court and that his decision was final so far as provincial legislation was concerned. This, however, could not oust the jurisdiction of the Dominion Parliament. In *The Crown Grain Co. v. Day*(1) it was held that provincial legislation could not provide that, in mechanics' lien cases, there should be no further appeal beyond the provincial Court of Queen's Bench, in Manitoba.

The "Supreme Court Act," by section 41, gives an appeal in the following language:—

An appeal shall lie to the Supreme Court from the judgment of any court of last resort created under provincial legislation to adjudicate concerning the assessment of property for provincial or municipal purposes in cases where the person or persons presiding over such court

is or are by provincial or municipal authority authorised to adjudicate and the judgment appealed from involves the assessment of property at a value of not less than ten thousand dollars.

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Previous to the Revised Statutes of Canada, 1906, chapter 139, the clause of the former "Supreme Court Act" dealing with assessment appeals, instead of the words in the present section "by provincial or municipal authority authorized to adjudicate," had the words "appointed by provincial or municipal authority" and it was held by this court in the case of *The City of Toronto v. The Toronto Railway Co.*(1) that where, in the Province of Ontario, an appeal lay from the court of revision to a board of county court judges, and it was desired to take an appeal from such board to the Supreme Court of Canada, that no appeal lay under the section in question, as it then stood, as the county court judges were not appointed by provincial or municipal authority but by Dominion authority. Since the Revised Statutes of Canada, 1906, came into force this decision has no further application and jurisdiction has been exercised in a number of cases: *Canadian Niagara Power Co. v. Township of Stamford*(2) *Re Heintze, Fleitman v. The King*.(3)

I am of opinion that the district judge who heard the appeal from the court of revision in the present case was a "court of last resort created under provincial legislation" within the meaning of section 41 of the "Supreme Court Act."

Under these circumstances the motion should be granted and the jurisdiction of the Supreme Court of Canada to entertain the appeal should be affirmed.

Motion granted with costs.

(1) 27 Can. S.C.R. 640.

(2) 50 Can. S.C.R. 168.

(3) 52 Can. S.C.R. 15.

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On the 2nd of November, 1915, the appeal to the Supreme Court of Canada was heard on the merits, the judges present being Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ., and judgment was reserved.

Chrysler K.C. appeared for the appellant.

C. J. Ford for the respondent.

On the 15th of November, 1915, judgment was delivered allowing the appeal with costs, the Chief Justice and Davies J. dissenting. By this judgment, on a view by the majority of the judges of the evidence as to the value of the property in question, the amount of the assessment thereon was further reduced. (See 9 West W.R., pages 195 and 668).
