
GATINEAU POWER COMPANY (PETITIONER) } APPELLANT; 1928
*May 14.
*May 28.

AND

FREEMAN F. T. CROSS (RESPONDENT) ... RESPONDENT.

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

Appeal—Jurisdiction—Judgment by an appellate court quashing appeal to that court for want of jurisdiction—Matter in controversy to exceed \$2,000—Supreme Court Act, s. 39.

The matter in controversy in this appeal is whether there exists a right of appeal to the Court of King's Bench from the decision of the Quebec Public Service Commission refusing to allow an expropriation. The right to have that body entertain an application for authority to expropriate is not appreciable in money and still less so is the right of appeal to the appellate court. The consequence of authorization by the Commission might result in a proceeding in which the amount involved would exceed two thousand dollars; but the ultimate award on the expropriation cannot be taken as the matter in controversy in this appeal.

MOTION to quash for want of jurisdiction an appeal from a decision of the Court of King's Bench, appeal side, province of Quebec, quashing an appeal to that court for want of jurisdiction.

*PRESENT:—Anglin C.J.C., Mignault, Rinfret, Lamont and Smith JJ.

1928
GATINEAU
POWER
COMPANY
v.
CROSS.

Eug. Lafleur K.C. for the motion.

Aimé Geoffrion K.C. contra.

The judgment of the court was delivered by

RINFRET J.—The Gatineau Power Company applied to the Quebec Public Service Commission for authority to expropriate

a portion of the lot twenty-four in the fifteenth range of the township of Hull * * * , a power-house and a portion of the penstock connecting the said power-house with the dam on Meech's Creek and forming part of a water-power known as Meech's Creek power, belonging to Freeman T. Cross.

It is alleged that the development of the applicant company's water-power at Chelsea Falls would have the effect of submerging these lands, constructions and water-power, which have a permanent force of less than two hundred horse-power.

The petition was made under section 28k of the *Public Service Commission Act* (R.S.Q. 1925 c. 17 as amended by 16 Geo. V, c. 16, s. 6).

The Quebec Public Service Commission refused to give the authorization applied for.

Under the *Public Service Commission Act*, an appeal lies to the Court of King's Bench as follows:

58. An appeal shall lie to the Court of King's Bench (Appeal Side) in conformity with article 47 of the Code of Civil Procedure, from any final decision of the Commission, upon any question as to its jurisdiction, or upon any question of law, except in expropriation matters, but such appeal may be taken only by leave of a judge of the said court, given upon a petition presented to him within fifteen days from the rendering of the decision, or from the homologation thereof in cases where the same is required, notice of which petition must be given to the parties and to the Commission within the said fifteen days. The costs of such application shall be in the discretion of the judge.

An application for leave to appeal under the above section was made to a Judge of the Court of King's Bench, who granted it.

On motion of Cross, however, the full court subsequently quashed the order for leave on the ground that this was an appeal "in expropriation matters," which are specially excepted from the jurisdiction of the Court of King's Bench.

The Gatineau Power Company then served notice of appeal to the Supreme Court of Canada, and Cross now moves to quash for want of jurisdiction.

The appeal is from the judgment of the Court of King's Bench only and the question to be decided on the motion is therefore: Whether an appeal lies to the Supreme Court of Canada from a judgment rendered in a provincial court where the appeal to that court was quashed for want of jurisdiction.

Since the amendments to the *Supreme Court Act* (10-11 Geo. V., c. 32) which came into effect on the first day of July, 1920, and "except as otherwise provided by sections thirty-seven and forty-three" (which have no application here):

no appeal shall lie to the Supreme Court from a judgment rendered in any provincial court in any proceeding unless,—

(a) the amount or value of the matter in controversy in the appeal exceeds the sum of two thousand dollars; or

(b) special leave to appeal is obtained as hereinafter provided. (i.e. from the highest court of final resort having jurisdiction in the province in which the judicial proceeding was originally instituted).

Here, no special leave to appeal was obtained. In order therefore to entertain jurisdiction, this court must find that the amount or value of the matter in controversy in the appeal exceeds the sum of two thousand dollars.

The matter in controversy in this appeal, as we have seen, is whether in the premises there exists a right of appeal to the Court of King's Bench from the decision of the Quebec Public Service Commission refusing to allow the expropriation.

Should we come to the conclusion that such right exists, all that we could do would be to remit the case to the Court of King's Bench to be there heard on the merits. In turn, the only question then to be decided by the Court of King's Bench would be whether the Quebec Public Service Commission was right in holding, as it did, that it had no jurisdiction, under section 28k of c. 16 of the statute of 1926, to authorize the expropriation of an established industry or of a water-power already developed. Assuming this was held otherwise by the Court of King's Bench or by us on a further appeal, the application would return before the Commission, which might or might not then authorize the expropriation. Its order, in any event, would be made in the exercise of judicial discretion. Thus, the whole matter in controversy, even if traced back to the Commission—and

1928

GATINEAU
POWER
COMPANYv.
CROSS.

Rinfret J.

1928

GATINEAU
POWER
COMPANY

v.

CROSS.

Rinfret J.

we do not think it should be—is merely the right to have that body entertain an application for authority to expropriate. Such right is not appreciable in money. Still less so is the right of appeal to the Court of King's Bench which is the sole matter in controversy on the projected appeal here. The consequence of the authorization by the Commission might result in a proceeding in which the amount involved would exceed two thousand dollars; but the ultimate award on the expropriation is not the matter in controversy in this appeal; and, as was said in *Lachance v. La Société de Prêts et de Placements de Québec*: (1)

our jurisdiction does not depend on the possible consequence of a possible judgment.

We have no jurisdiction in this case as it now stands. The motion must be allowed and the appeal quashed with costs.

Motion granted with costs.
