LOUISE OLIVIER & VIR (DEFENDANT) ..... APPELLANT;

AND

LUDGER JOLIN AND NARCISSE RIVARD ES-QUALITÉ (PLAINTIFFS) RESPONDENTS.

1917
March 5.
March 26.

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

Appeal—Jurisdiction—Supreme Court Act, section 46—Future rights —Money payable to His Majesty.

The words "where rights in future might be bound," contained in sub-section (*b*) of section 46 of the "Supreme Court Act," apply to each of the subjects mentioned in the first part as well as to those mentioned in the second part of said subsection: Lariviere v. School Commissioners of Three Rivers (23 Can. S.C.R., 723), followed.

(Idington and Duff JJ. contra).

MOTION to quash for want of jurisdiction an appeal from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of the Superior Court, District of Three Rivers, maintaining the plaintiffs' action with costs.

The facts on which the questions of law for decision depend are sufficiently stated in the judgments now reported.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) Q.R. 25 K.B. 532.

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Belcourt K.C. for the motion, on behalf of the respondents.

J. J. Denis K.C. contra.

THE CHIEF JUSTICE.—This is a motion to quash for want of jurisdiction. The facts are not in dispute. An action was brought by the present respondents, collectors of revenue for the Province of Quebec, to recover from the the defendants, Dame Louise Olivier and Dame Alice Mailhot, in their quality of universal legatees to the succession of Judge Mailhot, a tax imposed by the Province of Quebec of 2 per cent. upon the estate. There is no dispute that the amount of the tax due to the plaintiffs was $1,808.46. The husband of the defendant, Dame Alice Mailhot, in response to plaintiff's demand, paid one-half of the tax; the defendant, Louise Olivier, widow of the testator, contested the plaintiff's claim to recover any portion of the tax from her, on the ground that the declaration which is required to be made under article 1380 of the Revised Statutes of Quebec by one of the universal legatees, had been made by her co-defendant, Dame Alice Mailhot, and that, under the law, it is the person who makes the declaration alone who is bound to pay all the taxes due from the succession. The amount claimed in the present action is $904.23, and the respondents now claim that the case is not appealable as it does not fall within section 46 of the "Supreme Court Act."

In short, the point in dispute between the parties may be stated as follows; the appellants contend on the one hand that, if the matter in controversy relates to revenue or sum of money payable to His Ma-

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jesty, the court has jurisdiction. The respondents say "no," the matter in controversy must not only relate to revenue or a sum of money payable to His Majesty, but must be a matter *in which rights in future must be bound.* In other words they contend that the words "rights in future might be bound" in this section apply to each of the items, fee of office, duty, rent, revenue, etc.

In my opinion, the case is clearly governed by authority. In 1886, the Supreme Court gave judgment in the case of the *Bank of Toronto* v. *Le Curé, etc. de la Nativité*(1). At that time the provisions of the present section 46 of the "Supreme Court Act" were contained in section 8 of 42 Vict. ch. 39, which reads as follows:—

No appeal shall be allowed from any judgment rendered in the Province of Quebec in any action, suit, cause, matter or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount, involves the question of the validity of an Act of the Parliament of Canada, or of the legislature of any of the provinces of Canada, or of an Ordinance or Act of any of the councils or legislative bodies of any of the territories or districts of Canada, or relates to any fee of office, duty, rent, revenue, or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound.

In that case Mr. Justice Taschereau analyses this section and makes use of the following language:—

From the Province of Quebec four classes of cases are only appealable under 42 Vict. ch. 39, sec. 8: 1st, any case wherein the matter in controversy amounts to the sum or value of $2,000; 2ndly, any case wherein the matter in controversy involves the question of the validity of an Act of Parliament, or of any of the local legislatures; 3rdly, any case wherein the matter in controversy relates to any fee or office or any duty or rent or revenue payable to Her

(1) 12 Can. S.C.R. 25.

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Majesty, where the rights in future might be bound. These last words must be read as qualifying all this third class as well as the next. If, for instance, a fee of office is claimed, but the right to it is denied by the defendant, the case is appealable, but if in an action for a fee of office, the defendant pleads payment, the case is not appealable if under $2,000; 4thly, any case wherein the matter in controversy relates to any title to lands or tenements, or title to annual rents or such like matters or things where the rights in future might be bound.

The statutes were revised in 1886 and section 8 became section 29, R.S.C. ch. 135. The only alteration made in the old section being that the letters (*a*) and (*b*) are made use of to subdivide the two paragraphs which defined the class of cases in which an appeal would lie. In the revision of 1906 the language of the statute of 1886 was verbally reproduced with the same subdivision except that the amendment which was made, in 1893, by 56 Vict. ch. 29 was inserted, viz., the words,

such like matters or things where the rights in future might be bound

were made to read

other matters or things where the rights in future might be bound.

The section was next considered, in 1889, in the case of *Gilbert* v. *Gilman* (1). In that case the court was mainly concerned in construing the words "such like matters or things where rights in future might be bound" in connection with the doctrine of "*noscitur a sociis.*" In that case Strong J. says:—

Not only must future rights be bound by the judgment in order that an appeal may be admitted, when the amount in controversy is less than $2,000, but further the future rights to be so bound must relate to some or one of the matters or things specified in the subsection in question, viz., fee of office, duty, rent, revenue or sum of money payable to Her Majesty, or to some title to lands or tene-

(1) 16 Can. S.C.R. 189.

ments or to some like matters and things where the same consequence will follow, viz., when future rights will be bound.

Also in *Chagnon* v. *Norman*(1), Sir W. J. Ritchie, speaking for the court, says:—

Neither is the case appealable as relating to a fee of office where the rights in future might be bound.

The decision in *Larivière* v. *School Commissioners of Trois-Rivières*(2), is also instructive because it was decided on the statute after the amendment which substituted "other matters or things, etc.," for "such like matters or things, etc." This amendment was assented to by Parliament on 1st April, 1893, and I find on reference to the records in the Supreme Court office that the action was instituted on 8th April of the same year. In that case the judgment of the court concludes with the following language:—

The words "where rights in future might be bound" in subsection (*b*), section 29, govern the preceding words, "any fee of office. etc."

In these three cases the court in construing the words

fee of office, duty, rent or revenue or sum of money payable to His Majesty, etc.,

held that they were governed by the concluding clause of the paragraph

where the rights in future might be bound.

In view of this uniform jurisprudence of the Supreme Court extending over thirty years even if we were not satisfied with the construction which has been placed upon this section, I do not see that at

(1) 16 Can. S.C.R. 661. (2) 23 Can. S.C.R. 723.

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this late date we are justified in overruling it. I have serious doubts whether in this case there is a matter in controversy which relates to a sum of money payable to the Crown within the meaning of the statute, because all parties agree the tax to be paid on this estate is $1,808.46. It is only a question as to which of these two ladies shall pay the balance of $909.23, but in any event there is certainly no

revenue payable to His Majesty, where rights in future might be bound.

I would grant the motion to quash with costs.

DAVIES J.—Whatever I might think the true construction to be of subsection (*b*) of section 46 of the "Supreme Court Act" if I was called upon to determine it without binding authority—I am of the opinion that such binding authority exists and that it is not now open to us to reverse it. The cases are collected in Mr. Cameron's book of Practice, at pages 211-12. These cases determine that the latter words of the subsection "where rights in future may be bound" apply as well to controversies

relating to any fee of office, duty, rent, ar any sum of money payable to His Majesty

as to the words following "any title to lands, etc.," in other words that they apply to and control the whole subsection.

Parliament has not seen fit since these decisions were given to change the subsection and I feel it is not open now for us to put a different construction upon it from that which in the cases I refer to has been placed upon it.

Under these circumstances, I would allow the

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motion to quash for want of jurisdiction. Costs should follow the result.

Idington J.

IDINGTON J. (dissenting).—The amount in controversy does not entitle the appellant to seek relief here. But the official suing must certainly be held to rest his case upon a claim to revenue payable by appellant to His Majesty and therefore I think the application to quash should be refused with costs.

DUFF J. (dissenting).—This is an appeal from the judgment of the Court of King's Bench in Quebec in which the appellant was adjudged liable to pay a certain sum of money as succession duty under the Quebec statute, 4 Geo. V. ch. 9. The respondent is the collector who sued on behalf of the Crown and the controversy relates to the question of the appellant's responsibility for the sum demanded which he has been adjudged liable to pay under the provisions of the statute. It seems to me to be very clear that the "matter" thus in "controversy"

> relates to a duty * * * revenue or * * * sum of money payable to His Majesty

and that the judgment is consequently appealable under section 46, subsection (*b*) of the "Supreme Court Act." Mr. Belcourt argues, however, that the words

> any fee of office, rent, revenue, or any sum of money payable to His Majesty

are governed by the phrase at the end of the clause

> where rights in future might be bound.

The contention, in my opinion, is quite without substance; and to make that clear it is only necessary to

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reproduce the subsection in full. These are the words:—

> Relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty, or to any title to lands or tenements, annual rents and other matters or things where rights in future might be bound.

The meaning of these words according to the grammatical construction is unmistakable. The disjunctive "or" separates the whole of what follows from all of the first limb of the subsection succeeding the word "relates." The precise meaning of the subsection would be explicitly given by inserting the word "relates" between the words "or" and "to" in the second line. The phrase relied upon very clearly does not qualify any of the words of the first limb. Strange as it may seem, however, Mr. Belcourt is not without the support of judicial opinion in the contention he raises. As regards the opinions relied upon I will only say that, in my judgment, having regard to the circumstances in which they were expressed, I am under no obligation to give effect to them.

ANGLIN J.—Section 46 of the "Supreme Court Act" restricts, in cases from the Province of Quebec, the general right of appeal conferred by section 36. If untramelled by authority I should certainly hold that the earlier words in clause (*b*) of section 46,

> any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty,

are not governed by its concluding words,

> where rights in future might be bound.

The repetition of the preposition in the unmistakable disjunctive "or to," by which those

earlier words are immediately followed, precludes the application to them of the concluding words of the clause. The arrangement of the corresponding provision of the Quebec Code of Civil Procedure, likewise based on 9 Geo. III. ch. 6, sec. 30, as now found in article 68 of the Code of Civil Procedure, makes it, if possible, still more plain that this is the proper construction of the section.

Nor should I have found any great difficulty in distinguishing the decisions of this court in *Bank of Toronto* v. *Le Curé, etc.*(1); *Gilbert* v. *Gilman*(2), and *Chagnon* v. *Norman*(3), both because of essential differences in the nature of the subject-matters of those cases and because of the material change in the statute made, after they were decided, by 56 Vict. ch. 29, sec. 1, whereby the words of the original section "such like matters or things" were replaced by the words "other matters or things."

After that amendment, however, in *Larivière* v. *Three Rivers*(4), the court refused to allow security for an appeal in an action by a school-mistress to recover $1,243 as fees due to her collected by school Commissioners, holding (*a*) that the position of school-mistress is not an "office" within the section, and (*b*) that, if it were, as the plaintiff had ceased to hold it, no rights in future would be bound, adding that "the words 'when rights in future might be bound' * * * govern the preceding words 'any fee of office.'" With the utmost respect, while the judgment in *Larivière* v. *Three Rivers*(4), was no

(1) 12 Can. S.C.R. 25.
(2) 16 Can. S.C.R. 189.
(3) 16 Can. S.C.R. 661.
(4) 23 Can. S.C.R. 723.

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doubt right on the first ground, I am of the opinion that the second ground was clearly erroneous. Moreover, it was unnecessary for the disposition of the appeal. Yet, inasmuch as it is distinctly made a *ratio decidendi* by the court it cannot be treated as a mere dictum (*New South Wales Taxation Commissioners* v. *Palmer* (1); *Membery* v. *Great Western Rly. Co.*(2). I therefore reluctantly bow to its authority.

Appeal quashed with costs.

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(1) [1907] A.C. 179, 184.

(2) 14 App. Cas. 179, 187.