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*June 8.
*June 12.

THOMAS LEOPOLD WILLSON (DEFENDANT) ..... } APPELLANT.

AND

THE SHAWINIGAN CARBIDE COMPANY (PLAINTIFFS) ..... } RESPONDENTS.

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

Appeal—Jurisdiction — Declinatory exception — Interlocutory judgment—Review of judgment on exception—Practice.

The action was dismissed in the Superior Court upon declinatory exception. The Court of King's Bench reversed this decision and remitted the cause for trial on the merits. On motion to quash a further appeal to the Supreme Court of Canada:—

Held, that such motion should be granted on the ground that the objection as to the jurisdiction of the Superior Court might be raised on a subsequent appeal from a judgment on the merits.

Per Girouard J.—The judgment of the Court of King's Bench was not a final judgment and, consequently, no appeal could lie to the Supreme Court of Canada.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of Taschereau J. in the Superior Court, District of Montreal, and remitting the cause to the Superior Court to be tried upon the merits.

The action was brought by the company for a declaration that certain letters patent of invention should be declared invalid, to have a contract in respect thereto resiliated and for the return of the consideration paid by the company to the defendant under said contract. The defendant, by declinatory

*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington and Maclennan JJ.

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exception, objected to the jurisdiction of the Superior Court to hear or adjudicate upon the plaintiffs' demand on the grounds that the defendant's election of domicile, in accordance with the provisions of the "Patent Act" was outside the jurisdiction of the courts of the Province of Quebec, that he never had a domicile in the said province, and that, by the 34th section of the "Patent Act," the jurisdiction of the Superior Court in regard to matters of patents of invention is limited to such cases only as impeach their validity by a direct action where domicile has been elected in the Province of Quebec under the provisions of that Act.

In the Superior Court, Mr. Justice Taschereau maintained the declinatory exception and dismissed the action with costs. On appeal, the Court of King's Bench dismissed the exception and ordered that the case should be proceeded with in the Superior Court and disposed of upon the merits. The respondents moved to quash an appeal by the plaintiff from the latter judgment to the Supreme Court of Canada on the ground that the judgment complained of was not a final judgment within the meaning of the Supreme and Exchequer Courts Act.

Erroll Languedoc for the motion. We rely upon the following authorities: *Auger* v. *Magann*(1) and authorities there cited, also, on the appeal in the same case, *Magann* v. *Auger*(2) at pages 187-8; *Connolly* v. *Armstrong*(3); *Hamel* v. *Hamel*(4); *Griffith* v. *Harwood*(5). See also *Shannon* v. *Turgeon*(6),

(1) 2 Q.P.R. 161.
(2) 31 Can. S.C.R. 186.
(3) 35 Can. S.C.R. 12.
(4) 26 Can. S.C.R. 17.
(5) 30 Can. S.C.R. 315.
(6) 4 Q.P.R. 49.

where Würtéle J. defines an interlocutory judgment as one which is rendered in a case between the institution of the suit and the final judgment therein and as given in an intermediate state of the case on some intermediate question before the final decision. Also *Renaud* v. *Denis*(1); *Kandick* v. *Morrison*(2); *Reid* v. *Ramsay*(3), 5 Rosseau & Laisney, Dict. de Proc. Civ. p. 550, n. 27.

Aylen K.C., contra, referred to sections 11 and 34 of the Patent Act, as amended; sec. 2, sub-section "e" and sec. 60 of the Supreme and Exchequer Courts Act, *Chevalier* v. *Cuvillier*(4); *Shaw* v. *St. Louis* (5), *per* Taschereau J., at page 400 *et seq.; Shields* v. *Peak*(6), *per* Strong J., at page 592; *Mackinnon* v. *Keroack*(7), at pages 119, 122, 126 and 140; *Magann* v. *Auger*(8); *The Grand Trunk Railway Co.* v. *Perrault*(9); Arts. 164, 166, 170, and 171, C.P.Q.; *Forbes* v. *Atkinson* (10), *per* Sewell C.J., at pages 110 and 111.

The following French authorities are in point: 1 Carré & Chauveau, p. 565, n. 4; 4 Carré & Chauveau, p. 60, n. 3; 8 Carré & Chauveau, p. 421, n. 49, and also page 422, n. 52; *Boudonville* v. *Tarbouriech-Nadal* (11); *Ville de Nice* v. *Baudoin*(12); *Vincens & Barrière* v. *Jurié*(13); *Durocher* v. *Pillot*(14); *Ali-ben-Amor* v. *Salvo Sapiano*(15).

(1) 4 Q.P.R. 65.
(2) 2 Can. S.C.R. 12.
(3) Cout. Dig. 87.
(4) 4 Can. S.C.R. 605.
(5) 8 Can. S.C.R. 385.
(6) 8 S.C.R. 579.
(7) 15 Can. S.C.R. 111.
(8) 31 Can. S.C.R. 186.
(9) 36 Can. S.C.R. 671.
(10) Stu. K.B. 106, note.
(11) S.V. 1844, 1, 180.
(12) S.V. 1876, 1, 168.
(13) S.V. 1888, 2, 58.
(14) S.V. 1889, 1, 120.
(15) S.V. 1893, 1, 29.

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The Chief Justice.

THE CHIEF JUSTICE.—I agree that the appeal should be quashed upon the ground simply that if, as pleaded by the defendant, the jurisdiction of the Superior Court is ousted by section thirty-four of the Patent Act, it will not be too late for him to take the objection if the case should come to this court on appeal from the judgment to be rendered on the issues as now settled by the judgment of the Court of King's Bench.

GIROUARD J.—We are called again to determine what is a final judgment and what is an interlocutory one. A final judgment (*jugement définitif*) is not necessarily the last one of the court, for we have held frequently, and more particularly in the recent case of *Johnson's Co.* v. *Wilson,* that the whole issue between the parties might be finally disposed of by a judgment which is not the last one. Here we have only a judgment dismissing a declinatory exception, and we do not know what the trial of the merits has in store. It is not therefore a *jugement définitif,* which disposes of the whole case.

Fuzier-Herman, vol. 25, p. 296, No. 382, says:

> On entend par jugement définitif celui qui statue sur toute la cause et qui la termine.

He quotes the following authorities: Bioche, vo. cit. n. 57; Boncenne, t. 2, p. 360 *et seq.;* Bonnier, n. 1071; Boitard et Colmet-Daage, t. 1, n. 240; Rousseau et Laisney, vo. "Jugement," n. 2.

The same interpretation has been given by the English and American Courts; 13 Am. & Eng. Encycl. of Law (2 ed.), p. 23; 2 Cyc. 586-591; 19 Cyc. 533.

Evidently the judgment appealed from does not

dispose of the whole case, but merely of an incident raised by a declinatory exception which was maintained by the trial court and rejected by the court of appeal. Of course in both the trial court and the court of appeal the question cannot be raised again; it is there *chose jugée;* but it can be raised here if, after being disposed of on the merits, the case comes up again before this court. The reason for this ruling is that an appeal on the merits opens all the interlocutories, especially if a reservation or an exception be filed immediately after the rendering of the interlocutories. Such has been the well settled practice and jurisprudence of the Province of Quebec. *Renaud* v. *Tourangeau*(1); *Jones* v. *Gough*(2); *Goldring* v. *La Banque d'Hochelaga*(3); *Benning* v. *Grange*(4); *Archer* v. *Lortie*(5); *Metras* v. *Trudeau*(6).

This court expressed the same views on several occasions, and especially in *Molson* v. *Barnard*(7); *Hamel* v. *Hamel*(8); *Griffith* v. *Harwood*(9).

It must be noticed that our court has no discretion in the matter like the court of appeal of Quebec, which may grant leave to appeal from interlocutory judgments. By the statute which constitutes this court our jurisdiction *ratione materiæ* is limited to appeals from final judgments, and the motion to quash must therefore be granted with costs. If, however, as I have observed, the defendant ever comes before this court upon the merits, he will be at liberty to take up the point again and have it revised by this

(1) 5 Moo. P.C. (N.S.) 5.
(2) 3 Moo. P.C. (N.S.) 1.
(3) 5 App. Cas. 371.
(4) 13 L.C. Jur. 153.
(5) 3 Q.L.R. 159.
(6) M.L.R. 1 Q.B. 347.
(7) 18 Can. S.C.R. 622.
(8) 26 Can. S.C.R. 17.
(9) 30 Can. S.C.R. 315.

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court, should the judgment of the court of appeal be erroneous.

DAVIES J.—I agree that the appeal should be quashed for the reason given by the Chief Justice.

IDINGTON J. also concurred in the judgment quashing the appeal with costs.

MACLENNAN J.—I agree that the appeal should be quashed for the reason stated by the Chief Justice.

Appeal quashed with costs.

Solicitors for the appellant: *Aylen & Duclos.*

Solicitors for the respondents: *Greenshields, Greenshields, Macalister & Languedoc.*