

1904

*May 16.

*May 18.

MICHAEL CONNOLLY (PLAINTIFF)...APPELLANT,

AND

THE BAIE DES CHALEURS RAIL- }
WAY COMPANY (DEFENDANTS. }

AND

EDGAR N. ARMSTRONG (INTER- } RESPONDENT.
VENANT)..... }ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.*Appeal—Jurisdiction—Interlocutory proceeding—Final judgment.*

There is no appeal to the Supreme Court of Canada from a judgment on a petition for leave to intervene in a cause, the proceeding being merely interlocutory in its nature. *Hamel v. Hamel* (26 Can. S. C. R. 17) followed.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, District of Montreal, and granting the prayer of the respondent's petition to be allowed to intervene in the cause.

The respondent applied by petition to the Superior Court for leave to intervene in the suit pending between the plaintiff and the defendants for the purpose of protecting certain rights claimed by him which might be affected by the judgment in the principal action. The petition was refused by the Superior Court but, on appeal, this decision was reversed by the Court of King's Bench and an order made permitting the respondent to intervene as prayed in his petition for the purpose of maintaining the rights claimed by him and reserving the question as to costs

*PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies, Nesbitt and Killam JJ.

until the final judgment upon the merits of the intervention.

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 v.
 ARMSTRONG.

T. Chase Casgrain K.C. for the motion. The judgment is interlocutory only and does not adjudicate upon the matters in controversy. *Hamel v. Hamel* (1).

Perron contra. The new Code of Civil Procedure for the Province of Quebec has amended the law as it existed when the decision in *Hamel v. Hamel* (1) was given. Under the present procedure, the judgment now appealed from is a final judgment as to the right to intervene. Compare arts. 154 and 158 of the old Code of Procedure and the provisions of arts. 220 to 224 of the new Code. This intervention is a new proceeding under the new Code. The reasons given in the Court of King's Bench are equivalent to a final judgment on the merits of the intervention. *Shaw v. St. Louis* (2); *Baptist v. Baptist* (3).

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—All that is demanded by the conclusions of the intervention is the permission to be allowed to intervene. That is, consequently, all that the court could grant and all that the judgment *a quo* does grant, reserving the question of costs till the final judgments on the merits. That is clearly an interlocutory judgment and the appeal must be quashed as prayed for by the motion. *Hamel v. Hamel* (1).

Appeal quashed with costs.

Solicitors for the appellant: *Archer, Perron & Taschereau.*

Solicitors for the respondent: *McGibbon, Casgrain, Mitchell & Surveyer.*

(1) 26 Can. S. C. R. 17.

(2) 8 Can. S. C. R. 385.

(3) 21 Can. S. C. R. 425.