

1895
 *Oct. 8. GEORGE BARRINGTON AND } APPELLANTS ;
 OTHERS

AND

THE CITY OF MONTREALDEFENDANT.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER
 CANADA SITTING IN REVIEW AT MONTREAL.

Appeal—Mandamus—Judgment of Court of Review—54 & 55 V. c. 25 (D).

54 & 55 V. c. 25 (D) does not authorize an appeal to the Supreme Court of Canada from a decision of the Court of Review in a case where the judgment of the Superior Court is reversed and there is an appeal to the Court of Queen's Bench. *Danjou v. Marquis* (3 Can. S. C. R. 251) and *McDonald v. Abbott* (3 Can. S. C. R. 278) followed.

MOTION to quash for want of jurisdiction, an appeal from the Superior Court for Lower Canada sitting in review at Montreal.

By R. S. C. ch. 135 an appeal would lie to the Supreme Court from the decision of the court of final resort in the province only such court, in the province of Quebec, being the Court of Queen's Bench. By 54 & 55 Vic. ch. 25, an appeal was granted from the Superior Court in Review in cases where, and so long as, no appeal lies from the judgment of that court when it confirms the judgment rendered in the court appealed from which by the law of the province of Quebec are appealable to the Judicial Committee of the Privy Council.

In this case the appellants, Barrington and others, petitioned the Superior Court for a writ of mandamus to compel the City of Montreal to proceed with certain

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

works on the streets of the city under the provisions of a statute of the province. The Superior Court ordered a peremptory writ of mandamus to issue and the Court of Review, on appeal by the city, reversed the judgment of the Superior Court and set aside the order for the writ. The petitioners then took an appeal to the Supreme Court from the decision of the Court of Review.

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The respondent's factum did not raise the question of jurisdiction but on the appeal being called for hearing:

Ethier Q.C. moved to quash the appeal.

This case is not within 54 & 55 Vic. ch. 25. The judgment of the Superior Court was not affirmed and an appeal could have been taken to the Court of Queen's Bench. It is therefore governed by *Danjou v. Marquis* (1), and *MacDonald v. Abbott* (2).

Weir for the appellant *contra*. The cases cited were determined under the provisions of R. S. C. ch. 135, but the law has been since altered and appeals from the Court of Review are now allowed. This case is within the terms of the present Act.

The judgment of the court was delivered by:

THE CHIEF JUSTICE (Oral).—It is quite clear that we have no jurisdiction to entertain this appeal. The case of *Danjou v. Marquis* (1), expressly decided that an appeal did not formerly lie to this court from a decision of the Court of Review that court not being the court of last resort in the province. By 54 & 55 Vic. ch. 25, passed since the decision in *Danjou v. Marquis* (1), an appeal is allowed from decisions of the Court of Review in certain cases, but that statute does not apply to the case before us; it only provides for

(1) 3 Can. S. C. R. 251.

(2) 3 Can. S. C. R. 278.

1895 such appeals when the judgment of the court of first
BARRINGTON instance has been affirmed, and no appeal lies to the
v. Queen's Bench. Here, the judgment of the Superior
THE CITY OF COURT has been reversed by the Court of Review, and
MONTREAL. there was nothing to prevent the appellant from ap-
The Chief pealing to the Court of Queen's Bench.
Justice.

The case cited, and that of *MacDonald v. Abbott* (1), which follows it, govern the case before us and the appeal must, therefore, be quashed.

Appeal quashed without costs

Solicitors for the appellants : *Weir & Hibbard.*

Solicitors for the respondent : *Roy & Ethier*

(1) 3 Can. S. C. R. 278.