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THE MINISTER OF NATIONAL REVENUE AND OTHERS } APPELLANTS;

AND

RENE LAFLEUR RESPONDENT.

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

Jurisdiction—Appeal—Objection to jurisdiction of Sessions Court to hear complaints under the Income Tax Act—Writ of prohibition—Competency of Superior Court to issue writ attacked by declinatory exception—Whether Court of Queen's Bench had jurisdiction to hear appeal from dismissal of declinatory exception—Code of Civil Procedure, arts. 170 et seq.

The respondent was summoned before the Court of Sessions to answer complaints under the Dominion *Income Tax Act*. He objected to the jurisdiction of the Court, and prior to the date set for the preliminary inquiry obtained the issue of a writ of prohibition suspending the proceedings. The Minister, by a declinatory exception, objected to the jurisdiction of the Superior Court to issue a writ of prohibition against a Court of criminal jurisdiction in a criminal matter. The exception was dismissed. The Minister obtained leave to appeal to the Court of Queen's Bench, but that Court, by a majority decision, found that it had no jurisdiction to hear the appeal on the ground that the judgment dismissing the declinatory exception was a judgment in a criminal matter from which no appeal was provided for under the *Criminal Code*. The Minister was granted leave to appeal to this Court.

Held: The appeal should be allowed and the case should be returned to the Court of Queen's Bench.

The Superior Court is a Court of civil jurisdiction and its procedures are regulated by the *Code of Civil Procedure*. Under arts. 170 *et seq.* of that Code, if the Superior Court has no power *ratione materiae* to

*PRESENT: Kerwin C.J. and Taschereau, Locke, Cartwright, Fauteux, Abbott, Martland, Judson and Ritchie JJ.

entertain an action brought before it, not only has it jurisdiction to declare itself incompetent, but it is obliged to do so if requested by a party or of its own motion if not so requested. Even if the writ of prohibition should, because it was incidental to a criminal prosecution, be held to be a criminal proceeding, it did not follow that the judgment of the Superior Court on the declinatory exception was a judgment in a criminal matter. The sole issue on the exception was one of competency in the administration of justice and, in the present case, one depending on whether the subject-matter of the action in the Superior Court should be held by that Court to be of a civil or criminal matter. The judgment on the declinatory exception was not a judgment in a criminal matter but one as to the competency of the Superior Court, and therefore, the Court of Queen's Bench had jurisdiction to hear the appeal against that judgment whether or not the matter in which the question was raised was a criminal or civil matter.

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APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, dismissing, for lack of jurisdiction, an appeal from a judgment of Reid J. Appeal allowed.

R. Bédard, Q.C., and *M. Charbonneau*, for the appellants.

R. Paré, Q.C., for the respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—Summoned before the Court of Sessions, in the district of Montreal, to answer seven complaints lodged against him under the Dominion *Income Tax Act*, respondent, in each of the cases, objected to the jurisdiction of the Court of Sessions and prior to the date set for preliminary inquiry, applied for and obtained in the Superior Court the issuance of a writ of prohibition ordering the suspension of the proceedings in the Court of Sessions.

In obedience to the writ of prohibition, appellants appeared in the Superior Court and by a declinatory exception objected to the jurisdiction of the Superior Court to issue a writ of prohibition against a Court of criminal jurisdiction in a criminal matter. This exception was dismissed as ill-founded by Reid J.

Appellants then obtained leave from Bissonnette J. to appeal this judgment of the Superior Court to the Court of Queen's Bench (Appeal Side).

By a majority decision, the Court of Appeal¹ decided that it had no jurisdiction to hear the appeal.

¹[1962] Que. Q.B. 327.

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This decision rests on the following reasoning. The writ of prohibition issued in this case is incidental to a criminal prosecution and, on the principle of *In re Fred Storgoff*¹, a criminal proceeding; therefore, it is said, the judgment dismissing the declinatory exception is a judgment in a criminal matter; such a judgment is appealable only if an appeal is provided for under the *Criminal Code*; and since the *Criminal Code* does not provide in s. 691 for an appeal from a judgment dismissing a declinatory exception but only from judgments *granting* or *refusing* the relief sought in proceedings by way of prohibition, the Court of Appeal has no jurisdiction.

Casey J., dissenting, found that this approach of the majority to the question of the jurisdiction of the Court revealed a misunderstanding of the problem presented by the case. He expressed the opinion that whenever the jurisdiction of the Superior Court is questioned, there is an appeal to the Court of Queen's Bench (Appeal Side) from the judgment that maintains or dismisses the declinatory exception and this without regard to the matter in which the question is raised. Being of the view that the Court of Appeal had jurisdiction, he proceeded to consider the merit of the appeal and concluded that it should be maintained.

Appellants then appealed with leave of this Court from this majority judgment of the Court of Appeal.

When the case was called, counsel for respondent was apprised that the Court desired to hear him at first on the question of the jurisdiction of the Court of Queen's Bench (Appeal Side). Having heard counsel on the point, the Court indicating that reasons would be delivered later, rendered judgment maintaining the appeal, declaring that the Court of Queen's Bench (Appeal Side) had jurisdiction to hear the appeal from the decision of the Judge of first instance and ordering the case to be returned to the Court of Queen's Bench (Appeal Side) so that it may decide whether the Superior Court had jurisdiction to issue the writ of prohibition.

With deference to the members of the majority, we are all in respectful agreement with the conclusion reached by Casey J. on the question of jurisdiction. Jurisdiction is the

¹[1945] S.C.R. 526, 84 C.C.C. 1, 3 D.L.R. 673.

extent and the limit of the power of a Court or of a Judge to entertain an action, petition or other proceeding. The Superior Court is a Court of civil jurisdiction, R.S.Q. 1941, c. 15, Part I, Division II, and the procedures as to that Court are regulated by the *Code of Civil Procedure*. Sections 170 *et seq.* of this Code provide, *inter alia*, that if the Superior Court has no power *ratione materiae* to entertain an action brought before it, the Superior Court has not only jurisdiction to declare itself incompetent, but is obliged to do so if requested by the defendant or of its own motion if not so requested. Counsel for respondent readily admitted that the Superior Court had jurisdiction to entertain the declinatory exception made by appellants and render a judgment either affirming or negating its jurisdiction to issue the writ of prohibition. However, he contended that, for the reasons accepted by the majority of the Court of Appeal, the Court of Appeal had no jurisdiction to review the decision of the Superior Court. It is difficult to reconcile this admission as to the competency of the Superior Court to entertain the declinatory exception made in the matter by appellants under s. 170 C.P.C., and this submission of incompetency of the Court of Queen's Bench (Appeal Side) to entertain an appeal in the very same matter from the judgment of the Superior Court, under the appellate provisions of the *Code of Civil Procedure*. Even if the writ of prohibition should, because it is incidental to a criminal prosecution, be held to be a criminal proceeding, it does not follow that the judgment of the Superior Court on the declinatory exception is, in the true sense, a judgment in a criminal matter. The sole issue on the exception is one of competency in the administration of justice and, in the present case, one depending on whether the subject-matter of the action initiated in the Superior Court should be held by that Court to be of a civil or a criminal nature. If found to be of a civil nature, the Superior Court is competent to entertain the action and it should dismiss the exception. If found to be of a criminal nature, the Superior Court is incompetent to entertain the action and it should maintain the exception. Were the nature of the subject-matter of the action determining the nature of the judgment to be rendered on the exception, the Superior Court would, in the first alternative, be competent to dismiss the exception and, in the second alternative,

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incompetent to maintain the same. The acceptance of this contention would render the exception illusory and purposeless. The judgment of Reid J. is not a judgment in a criminal matter but one as to the competency of the Superior Court.

That the Court of Queen's Bench (Appeal Side) had jurisdiction to hear the appeal against the judgment pronounced in first instance by Reid J. is shown in the reasons for judgment of Casey J.

There only remains to indicate that, by agreement of the parties, the judgment rendered in this appeal from the decision of the Court of Queen's Bench (Appeal Side) in file no. 7638 of the records of that Court, also applies to the other appeals to this Court between the same parties and on an identical question of law.

Appeal allowed.

Attorney for the appellant: E. A. Driedger, Ottawa.

Attorneys for the respondent: Pinard, Pigeon, Paré & LeJour, Montreal.
