

LA CITÉ DE VERDUN (DEFENDANT) APPELLANT;

1952

AND

*Mar. 24

*Apr. 2

JOSEPH ÉDOUARD VIAU (PETITIONER) . . RESPONDENT.

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

Appeal—Jurisdiction—Writ of prohibition arising out of criminal charge—Case started before 1949 amendment to Supreme Court Act—Cities and Towns Act, R.S.Q. 1941, c. 233, s. 302—Supreme Court Act, R.S.C. 1927, c. 35, s. 36.

The Supreme Court of Canada is without jurisdiction to hear an appeal in a case, which was started prior to the 1949 amendment to the *Supreme Court Act*, of a writ of prohibition arising out of a charge of aiding the commission of the offence of personation contrary to s. 302 of the *Cities and Towns Act* (R.S.Q. 1941, c. 233), notwithstanding the fact that special leave to appeal had been granted by the Court of Appeal, since this was a "proceeding for or upon a writ of prohibition arising out of a criminal charge", within the exception in s. 36 of the *Act*, as it stood before the 1949 amendment.

Boyer v. The King [1949] S.C.R. 89; *Marcotte v. The King* [1950] S.C.R. 352; *Rex v. Nat. Bell Liquors Ltd.* [1922] 2 A.C. 128 and *Canadian International Paper v. La Cour de Magistrat* [1938] S.C.R. 22 referred to.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), which reversed, St. Jacques and Barclay J.J.A. dissenting, the decision of the trial judge and maintained the writ of prohibition.

L. J. de la Durantaye Q.C. for the appellant.

Ubald Boisvert for the respondent.

The judgment of the Court was delivered by:

KERWIN J.:—The Court of King's Bench for the province of Quebec (Appeal Side) (1) granted leave to the city of Verdun to appeal to this Court from a judgment of its own maintaining a writ of prohibition at the suit of J. E. Viau. This Court's jurisdiction is defined by the *Supreme Court Act* and, as the request for a writ of prohibition was made in 1948, we must refer for our powers to that *Act* as it stood before the 1949 amendment: *Boyer v. The King* (2), where the earlier cases are considered. The decision in *Boyer* was approved by all the members of this Court: see *Marcotte v. The King* (3).

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Kellock and Cartwright J.J.

(1) Q.R. [1951] K.B. 172.

(2) [1949] S.C.R. 89.

(3) [1950] S.C.R. 352.

1952

CITY OF

VERDUN

v.

VIAU

Kerwin J.

By section 36 of that *Act*, as it then stood, there is excepted from our jurisdiction any proceedings for or upon a writ of prohibition arising out of a criminal charge. The word "criminal" in the section and in the context in question is used in contradistinction to "civil" and connotes a proceeding which is not civil in its character: *Rex v. Nat Bell Liquors Ltd.* (1), affirming (1921) 62 S.C.R. 118. This was a case of certiorari arising out of a prosecution under the Alberta Liquor Act but *Mitchell v. Tracey* (2), a case of prohibition arising out of a prosecution under the Nova Scotia Temperance Act was approved. Here, the application for the writ of prohibition arose out of a charge against the respondent of aiding the commission, by another, of the offence of personation contrary to article 302 of the *Cities and Towns Act* R.S.Q. 1941, c. 233. This appeal, therefore, falls within the exception in section 36 of the *Supreme Court Act* and it must be quashed with costs as of a motion to quash. The respondent is also entitled to its costs of the application for leave to appeal to this Court made to the Court of King's Bench, which by the latter's order, were to follow the event.

The appellant served a notice of motion for special leave to appeal under new section 41 of the *Supreme Court Act* as enacted by the amending Act of 1949. For the reasons already given, the new section does not apply and that application must be dismissed with costs.

It should be added that the leave given by the Court of King's Bench does not avail the appellant as the right to grant leave, conferred on that Court by section 41 of the *Supreme Court Act*, is confined to "any case within section thirty-six i.e. except (*inter alia*) any proceedings for or upon a writ of prohibition arising out of a criminal charge: *Canadian International Paper v. La Cour de Magistrat* (3).

Appeal quashed with costs.

Solicitors for the appellant: *Fauteux, Blain & Fauteux.*

Solicitor for the respondent: *Ubaldo Boisvert.*

(1) [1922] 2 A.C. 128 at 168.

(2) (1919) 58 Can. S.C.R. 640.

(3) [1938] S.C.R. 22.