

1937
* Oct. 18.
* Dec. 1.

CANADIAN INTERNATIONAL PAPER { APPELLANT;
COMPANY

AND

LA COUR DE MAGISTRAT, ARTHUR } RESPONDENTS.
LARUE, AND FRANÇOIS-X. LA-
COURSIÈRE

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

*Appeal—Jurisdiction—Writ of prohibition—Criminal charge—Leave to
appeal granted by appellate court—Supreme Court Act, R.S.C., 1927,
c. 35, ss. 36, 41. Arts. 993, 1003 C.C.P.*

The Supreme Court of Canada is without jurisdiction to hear an appeal from a judgment of an appellate court in proceedings for or upon a writ of prohibition arising out of a criminal charge, notwithstanding special leave to appeal granted by that court, as the latter could do so validly, under section 41 of the *Supreme Court Act*, only in cases "within section 36" of the Act.

MOTION by the respondents to quash for want of jurisdiction an appeal from a judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Fortier J., and quashing a writ of prohibition issued against the respondent.

L. Méthot K.C. for motion.

Ls. St.-Laurent K.C. contra.

The judgment of the Court was delivered by

CANNON J.—On the 27th January, 1936, François-Xavier Lacoursière, district magistrate, issued a summons

*PRESENT:—Duff C.J. and Cannon, Crocket, Davis and Hudson JJ.

or warrant against the appellant for infraction to the *Lord's Day Act* (R.S.C., c. 153). The appellant denied the jurisdiction of the magistrate and made an application for a writ of prohibition which issued against the respondents according to an order of Honourable Justice Marchand of the Superior Court. The writ is in the following terms:

Edouard VIII, par la Grâce de Dieu, Roi de Grande-Bretagne, d'Irlande et des Territoires Britanniques au delà des mers, Défenseur de la foi, Empereur des Indes.

A la Cour de magistrat pour le district judiciaire des Trois-Rivières, siégeant au palais de justice de la dite cité des Trois-Rivières, Arthur Larue, constable et officier spécial, chargé de l'observance de la loi concernant le jour du Seigneur, de la cité des Trois-Rivières et François Xavier Lacoursière, Ecr. magistrat de district dans et pour le district de Trois-Rivières.

Salut:

Nous vous enjoignons de ne pas procéder contre la dite requérante Canadian International Paper Company, sur la plainte portée par le dit intimé Arthur Larue, le 27 janvier 1936, et nous ordonnons que toutes procédures prises contre la dite requérante sur la dite plainte et poursuivies en conformité avec la procédure criminelle, soient arrêtées et interrompues à toutes fins que de droit, et que le dossier du tribunal inférieur soit transmis à notre Cour Supérieure, siégeant dans et pour notre dit district de Trois-Rivières, en notre cité de Trois-Rivières, sans délai, pour être là et alors procédé ultérieurement selon que de droit sur la demande de la dite requérante produite devant cette dite cour, le 3 mars 1936, et nous commandons au dit Arthur Larue de comparaître devant cette dite cour, en notre dit district de Trois-Rivières, en notre dite cité de Trois-Rivières, le sixième jour après signification sur lui de ce présent bref pour répondre à la demande de la requérante contenue dans sa dite requête et dans la déclaration ci-annexée.

Subsequently the writ was quashed by a judgment of the Superior Court (Fortier J.) on the 7th December, 1936, and the Court of King's Bench unanimously upheld his judgment on the 24th February, 1937 (1). On the 4th March, 1937, the Court of King's Bench granted special leave to appeal to this Court.

The respondents now move to quash the appeal for want of jurisdiction because these are proceedings for or upon a writ of prohibition arising out of a criminal charge which, under section 36 of the *Supreme Court Act*, are not appealable to this Court.

It must be noted that by section 41 of the Act, the highest court of final resort having jurisdiction in the province in which the proceeding was originated may grant special

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leave to appeal to this Court in any case "within section 36," i.e., except in criminal causes and in proceedings for or upon a writ of *habeas corpus*, *certiorari* or prohibition arising out of a criminal charge, etc. It was not disputed that these proceedings arose to stop the magistrate from hearing the criminal charge laid against the appellant. The learned counsel for the appellant contended, however, that the proceedings under the Code of Civil Procedure are not similar to the prohibition proceedings within the meaning of our section 36. This point seems to have been raised without success in *Gaynor & Greene v. United States of America* (1).

Article 1003 of the Code of Civil Procedure says:

The writ of prohibition lies whenever a court of inferior jurisdiction exceeds its jurisdiction.

It is applied for, obtained, contested and executed in the same manner as mandamus, and with the same formalities; and the writ of summons is directed to the court of inferior jurisdiction and to the party proceeding therein.

Under 993,

The writ of summons can issue only upon the authorization of a judge of the Superior Court, granted upon the presentation of a petition, supported by affidavit, affirming the truth of the facts set forth in the petition.

The writ issued in this case prohibits the court, the magistrate and the complainant from further proceeding, in order

que toutes les procédures prises contre la dite requérante sur la dite plainte et poursuivies en conformité avec la procédure criminelle, soient arrêtées et interrompues à toutes fins que de droit;

and it orders also that the record of the Magistrate's Court be transmitted to the Superior Court; but Arthur Larue alone is summoned to appear before the Superior Court to answer the petition. As far as the Magistrate's Court and the Magistrate himself are concerned, the writ contains nothing but a prohibition to proceed on a criminal charge and no summons to appear.

English authors and authorities have always been quoted, as far as my knowledge goes, in every reported prohibition case in the province of Quebec. See *inter alia*: *Bastien v. Amyot* (2); *Rossi v. Lacroix* (3); *Paris v. Couture* (4); *Vannier v. Meunier* (5).

(1) (1905) 36 Can. S.C.R. 247.

(3) (1929) Q.R. 46 K.B. 405.

(2) (1905) Q.R. 15 K.B. 22.

(4) (1884) 10 Q.L.R. 1.

(5) (1887) 15 Q.L.R. 210.

In *Rossi v. Lacroix* (1), the writ, by inadvertence, did not contain any prohibition and was simply an ordinary writ of summons to which was attached a copy of the original petition. The remarks of Mr. Justice Dorion in this case, at page 411, may be relevant:

Le code de procédure n'a pas créé le bref de prohibition. Il existait en vertu du droit commun. Il était, et il est encore, de la nature d'une ordonnance *nisi causa*, par laquelle il est enjoint à la partie de s'abstenir à moins que cause ne soit montrée tel jour. Cette formule, qui est la formule de toute ordonnance *nisi causa*, comporte un ordre exprès et un avertissement que celui à qui il est donné ne peut procéder qu'à ses risques et périls, et aux risques et périls de sa procédure. Le refus de s'y conformer le constitue en mépris de l'ordre donné.

Le code de procédure ne paraît pas avoir rien changé à cela, et, précisément, l'objet de la demande préalable à l'obtention du bref est de permettre au requérant de faire accompagner le bref d'un ordre de sursis. Le vrai bref de prohibition, c'est le bref péremptoire.

The point raised by the appellant cannot prevail.

Although the Court of King's Bench granted special leave to appeal in this case, we must not forget that they could do so validly only in cases within section 36 of the *Supreme Court Act* by which the granting or refusal of prohibition in criminal cases is expressly excluded from our appellate jurisdiction.

We are clearly of opinion that special leave should have been refused for want of jurisdiction to grant it and that the motion to quash the appeal must be granted with costs against the appellant.

Motion granted with costs.
