1927

*May 27.
*June 17.

JOSEPH SAMSON (DEFENDANT) .....APPELLANT;

AND

ODILON DROLET AND OTHERS (PLAINTIFFS) ..... } RESPONDENTS.

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

Quo warranto—Municipal election—Contestation—Mayor—Inability to perform duties—Joinder of claims—Propriety—Prescription—Arts. 87, 177 (6), 980, 987, 988, 1150, et seq. C.C.P.—R.S.Q. (1909) Arts. 5936, 5937, 7532, 7533.

The respondents brought a petition (*quo warranto*) to have the appellant's election as mayor of Quebec declared null, to remove him from that office, to disqualify him for municipal office for five years, to have him condemned to pay a fine of $400 to the Crown and to obtain an order for a new election. The joinder of these several claims was objected to by the appellant by way of a dilatory exception.

Held that, while the competence of an appeal from the disposition made of such an exception is doubtful, this court would in any event be loath to interfere with the judgment appealed from, as the propriety of the joinder is largely a question of practice and procedure; but, on the merits, this court is of opinion that there is nothing incompatible or contradictory in the several "causes of action" preferred by the respondents.

Held, also, that the fact that the requirements of art. 980 C.C.P. (which were imposed by art. 988 C.C.P.) do not apply to a proceeding for a declaration of disqualification imposed by art. 5936 R.S.Q. (1909) does not preclude the joinder of the "cause of action" given by the latter article with a proceeding properly instituted under art. 987 C.C.P.

Held, further, that the prescription under arts. 7532, 7533 R.S.Q. (1909), invoked by the appellant has no application to a demand for disqualification based on arts. 5936, 5937 R.S.Q. (1909).

Held, further, that it is within the power of a provincial legislature to impose disqualification from municipal office as a consequence of the contravention of statutory prohibitions enacted by it to ensure the proper conduct of municipal affairs. (B.N.A. Act, s. 92).

Judgment of the Court of King's Bench (Q.R. 43 K.B. 160) aff.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Gisborne J., and maintaining the respondents' petition for the issue of a writ of *quo warranto* against the appellant.

*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Lamont JJ.

(1) (1926) Q.R. 43 K.B. 160.

The material facts of the case are stated in the above head-note and in the judgment now reported.

L. St. Laurent K.C. for the appellant.

L. G. Belley K.C. and *S. Lapointe K.C.* for the respondents.

The judgment of the court was delivered by

ANGLIN C.J.C.—Upon the several points discussed by Allard J. (whose judgment is concurred in by Greenshields and Howard JJ.), we find ourselves entirely in accord with the views which that learned judge has expressed. There is no room to doubt the right of the Superior Court to entertain a proceeding such as that instituted by the respondents. Each of the several claims presented by them was properly the subject of the jurisdiction of that court. The propriety of their joinder in one proceeding (art. 87 C.C.P.) is largely a question of practice and procedure. Objection to such joinder is properly the subject of a dilatory exception (art. 177 (6) C.C.P.). While the competence of an appeal from the disposition made of such an exception is, to say the least, probably doubtful, we should, in any event, be extremely loath to interfere with the determination by the provincial court of appeal that the joinder was properly made. In the present instance, however, we see no reason to doubt the soundness of the views that have prevailed. There appears to be nothing incompatible or contradictory in the several "causes of action" preferred by the plaintiffs; they seek condemnations of a like nature; they are susceptible of the same mode of trial, i.e., by summary proceedings (arts. 1150 et seq. C.C.P.); and their joinder is not prohibited by any express provision. The fact that the requirements of art 980 C.C.P. (which were imposed by art. 988 C.C.P.) do not apply to a proceeding for a declaration of the disqualification imposed by art. 5936 R.S.Q. does not preclude the joinder of the "cause of action" given by the latter article with a proceeding properly instituted under art. 987 C.C.P.

On three points, two of them not expressly covered by the reasons for judgment of Mr. Justice Allard, we think it well to add a few words.

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SAMSON v. DROLET.

Anglin C.J.C.

The prescription under arts. 7532-3 R.S.Q. (1909), invoked by the appellant, has no application to a demand for disqualification based on arts. 5936-7 R.S.Q. (1909).

It is undoubtedly within the power of the provincial legislature to impose disqualification from municipal office as a consequence of the contravention of statutory prohibitions enacted by it to ensure the proper conduct of municipal affairs. "Municipal institutions within the province" is one of the subjects of provincial jurisdiction enumerated in s. 92 of the B.N.A. Act. The right of a provincial legislature to prescribe appropriate penalties for disobedience to statutory prohibitions which it is within its power to enact has been time and again affirmed by this court and in the Judicial Committee.

Whether the penalty of disqualification, when imposed, shall relate back so that the municipal officer shall be deemed not to have been duly elected where the offence has been committed during a previous term of office, or attaches only upon his being found guilty of the offence for which the penalty is imposed, is quite immaterial in the present case. The appellant merely ceased to hold office from the moment he was held disqualified. No penalties for his having acted as mayor prior to that date have been awarded against him. The suggestion, however, that there must be first a proceeding to determine the guilt of the accused and then a subsequent proceeding for the imposition of the penalty of disqualification savours so much of unnecessary circuity that it cannot be seriously entertained.

For these reasons we would dismiss the appeal, with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *St. Laurent, Gagné, Devlin & Taschereau.*

Solicitors for the respondents: *Lapointe & Rochette.*