

1928  
 \*Apr. 24.  
 \*May 2.

JOHN HENRY HAND (MIS EN-CAUSE) . . . . . APPELLANT;

AND

HAMPSTEAD LAND & CONSTRUCTION COMPANY (PLAINTIFF) . . . . . } RESPONDENT;

AND

THE TOWN OF HAMPSTEAD . . . . . (DEFENDANT)

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

*Appeal—Leave to appeal—Question of public importance affecting only one province—Proper construction of s. 41, Supreme Court Act—Jurisdiction of an appellate court to grant leave to appeal—Jurisdiction of the Supreme Court of Canada to grant same.*

Leave to appeal will not be granted from a judgment solely because it involves the construction of a provincial statute of a public nature

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

where it does not affect some interest outside the province. Every judgment of a provincial appellate court interpreting a statute of purely provincial application is not *per se* of such general importance as to warrant the granting of special leave to appeal to this court, its construction being *prima facie* a proper subject for final determination by the provincial courts.

Special leave to appeal may be granted by "the highest court of final resort having jurisdiction in" a province in any case (which in its opinion is otherwise a proper subject for "special leave") if it falls within s. 36 of the *Supreme Court Act*, i.e., in any case (save those specially excepted in s. 36) in which there has been a judgment of such "highest court of final resort" in a "judicial proceeding" which is either (a) "a final judgment" or (b) "a judgment granting a motion for non-suit or directing a new trial" and in which the amount or value of the matter in controversy in the proposed appeal will not exceed \$2,000. The proviso to s. 41, with its sub-clauses (a), (b), (c), (d), (e) and (f) has no bearing upon the jurisdiction of the provincial court of final resort to grant special leave to appeal, but relates exclusively to, and states the conditions of, the jurisdiction of the Supreme Court of Canada to grant special leave to appeal to it when such leave has been already refused by the highest court of final resort in the province.

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 HAND  
 v.  
 HAMPSTEAD  
 LAND &  
 CONSTRUCTION Co.

MOTION for leave to appeal to the Supreme Court of Canada from a decision of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the Superior Court and maintaining the plaintiff's action.

The action was brought for a declaration that a transfer of land by the appellant to the respondent was invalid and should be quashed and annulled on the ground that the consideration therefore was illegal because in contravention of a provision in the municipal code of the province of Quebec; and the question at issue in the appeal is whether it was within the authority of a municipal council to acquire property from a ratepayer of the municipality for the consideration of granting to the ratepayer exemption from taxation on other property owned by the ratepayer within the municipality.

*Eug. Lafleur K.C.* and *E. G. Place K.C.* for the motion.  
*C. Laurendeau K.C.* contra.

The judgment of the court was delivered by

ANGLIN C.J.C.—The mis-en-cause Hand having unsuccessfully applied to the Court of King's Bench of the prov-

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ince of Quebec for special leave to appeal from the adverse judgment of that court, now moves here for such leave.

The judgment refusing leave was in the following terms:

Whereas the mis-en-cause, appellant, petitions this court for special leave to appeal to the Supreme Court of Canada and alleges in support that the amount involved exceeds the sum of \$2,000 and, moreover, involves the title to real estate,

Considering that it does not appear that the amount in controversy exceeds the sum of \$2,000 (*sic*) and the judgment sought to be appealed from does not concern or determine a controversy with regard to title to any real estate,

Considering that the only question of law was whether it was within the authority of a municipal council to acquire property from a ratepayer of the municipality for the consideration of granting to the ratepayer exemption from taxation on other property owned by the ratepayer within the municipality,

Considering the judgment does not come within the terms of sec. 41 of the *Supreme Court Act*,

For these reasons the petition for leave to appeal to the Supreme Court is dismissed with costs; Mr. Justice Howard is of opinion that the petition should be granted.

It would appear from this judgment that the Court of King's Bench considered that because this case did not come within any of the sub-clauses of the proviso thereto, it was not within s. 41 of the *Supreme Court Act* so as to enable that court to grant special leave to appeal and on that ground refused the motion. With great respect this implies a misunderstanding of the first clause of s. 41, which alone relates to the granting of special leave to appeal by "the highest court of final resort having jurisdiction in the province." Special leave to appeal may be granted by that court in any case (which in its opinion is otherwise a proper subject for "special leave") if it falls within s. 36 of the *Supreme Court Act*, i.e., in any case (save those specially excepted in s. 36) in which there has been a judgment of such "highest court of final resort" in a "judicial proceeding" which is either (a) "a final judgment" or (b) "a judgment granting a motion for non-suit or directing a new trial" and in which the amount or value of the matter in controversy in the proposed appeal will not exceed \$2,000. That this is the proper construction of the first clause of s. 41 has been indicated in several judgments of this court.

The proviso to s. 41, with its sub-clauses (a), (b), (c), (d), (e) and (f), has no bearing upon the jurisdiction of

the provincial court of final resort to grant special leave to appeal, but relates exclusively to, and states the conditions of, the jurisdiction of the Supreme Court of Canada to grant special leave to appeal to it when such leave has been already refused by the highest court of final resort in the province.

There being apparently no power, however, to refer this matter back for further consideration by the Court of King's Bench, we find ourselves obliged to deal with it without having the advantage of the views of that court upon the fitness of the case for special leave. Having regard to the limitations upon our jurisdiction contained in the proviso to s. 41, we have first to determine whether the case now before us falls within some one of its sub-clauses. We are of the opinion that it falls within clause (d), because the matter in controversy in the projected appeal involves, in our opinion, "a title to real estate or some interest therein."

The action was brought for a declaration that a transfer of land by the mis-en-cause Hand to the town of Hampstead was invalid and should be quashed and annulled on the ground that the consideration therefor was illegal because in contravention of a provision in the *Cities and Towns Act* of the province of Quebec. The Court of King's Bench, reversing the judgment of the learned trial judge, granted the conclusions of the plaintiff's action and declared the transfer null and without effect. This judgment, no doubt, involved the construction of a statute of a public nature as well as the validity of the title to the land acquired by the municipality from the mis-en-cause, Hand.

But, while the statutory provision in question is of public importance, in the sense that it is of general application throughout the province of Quebec and deals with municipal matters, it is not suggested that its construction will affect any interest outside that province. It would seem, therefore, to be *prima facie* a proper subject for final determination by the provincial courts. *La Corporation du Comté d'Arthabaska v. La Corporation de Chester Est* (1).

We are not disposed to hold that every judgment of a provincial appellate court interpreting a statute of purely

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provincial application is *per se* of such general importance as to warrant the granting of special leave to appeal to this court. Were the present motion to be granted, it would serve as a precedent for the asking of special leave to appeal in every case in which a question of the interpretation of a provincial municipal Act might arise. We think it was not the purpose of Parliament in providing for special leave to appeal to this court that every case of this type might be brought before it.

We would, accordingly, on this ground refuse the motion with costs.

*Leave to appeal refused.*

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