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*June 11.

*June 22.

ERNEST BOUCHARD (PLAINTIFF) APPELLANT;

AND

HENRY SORGIUS (DEFENDANT) RESPONDENT.

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

*Appeal—Jurisdiction — “Supreme Court Act,” sections 39 and 46 —
Prohibition—Future rights. 1*

The words “where rights in future might be bound,” contained in sub-section (b) of section 46 of the “Supreme Court Act,” apply to the whole sub-section: *Olivier v. Jolin* (55 Can. S.C.R. 41), followed.

Per Davies, Idington, Duff and Anglin JJ.—Section 39 of the “Supreme Court Act,” giving an appeal to the Supreme Court in cases of prohibition, is limited and controlled by section 46 of the same Act: *Desormeaux v. The Village of Ste Thérèse* (43 Can. S.C.R. 82), followed.

Per Fitzpatrick C.J.—No appeal lies to the Supreme Court of Canada from the judgment of a court of the Province of Quebec rendered upon an application for a writ of prohibition against proceeding with the hearing of a criminal charge: *Gaynor and Green v. The United States of America* (36 Can. S.C.R. 247), followed.

APPEAL from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, District of Roberval, maintaining the plaintiff's petition for a writ of prohibition.

The appellant was charged before a magistrate with having set fire to the forest in the lower part of the County of St. John, which action was declared a criminal offence by section 515 of the Criminal Code. A writ of prohibition, issued in connection with these

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

proceedings, was maintained by the trial judge, but was discharged by the Court of Appeal.

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Belcourt K.C. for the motion, based largely his argument upon the claim that the action sought to be prohibited was exclusively a criminal matter or in the nature of a criminal proceeding.

Auguste Lemieux K.C. contra.

THE CHIEF JUSTICE.—This is a motion to quash.

Personally I am disposed to hold that we are without jurisdiction on the ground that the judgment appealed from was rendered upon a writ of prohibition against proceeding with the hearing of a criminal charge; and, under the jurisprudence of this court and of the Court of Appeal in England, there is no appeal in such cases. *Gaynor and Green v. United States of America*, (1); *Rex v. Garrett* (2). The appellant was charged before a magistrate with having set fire to the forest in the lower part of the River Brulé in the County of St. John without justification or excuse and against the statutes in such case made and provided. The statutes relied upon by the complainant are R.S.Q. (1909) sections 1636-37-39-40-41-55 and article 515 of the Criminal Code which latter makes it an offence to recklessly set fire to any forest in violation of a provincial or municipal law.

The writ of prohibition now in question was issued in connection with these proceedings and discharged by the Court of Appeal and this appeal is taken from that judgment.

In *Rex v. Garrett* (2), their Lordships say:—

The judgment of the Divisional Court in this case, discharging the rule for a prohibition, was a judgment in a criminal cause or matter

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

(2) 33 Times L.R. 305.

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—namely, the criminal proceedings pending in the Police Court, and this Court was unable to entertain any appeal from that judgment.

The majority of the court, however, prefer to grant the motion on the principle laid down in *Desormeaux v. Village of Ste. Thérèse* (1), where it was held that no appeal lies to the Supreme Court of Canada from the judgment of a court of the Province of Quebec in case of proceedings for or upon a writ of prohibition unless the matter in controversy falls within some of the classes of cases provided for by section 46 of the "Supreme Court Act."

DAVIES J.—The motion to quash this appeal was based by Mr. Belcourt largely upon the claim that the action sought to be prohibited was exclusively a criminal matter or in the nature of a criminal proceeding.

It is not necessary for me to deal with this contention because I am of opinion that apart from the question of the proceedings being of a criminal nature no appeal lies.

The judgments of this court in *Desormeaux v. Ste. Thérèse* (1), and *Olivier v. Jolin* (2), decided during this present year, determine respectively, 1st, that the section giving an appeal to this court in cases of prohibition is limited and controlled by the 46th section of the "Supreme Court Act" and, secondly, that in sub-section (b) of that section the words "where future rights may be bound" control the whole sub-section.

These two authorities are conclusive against the right to appeal in this case and the motion to quash should be allowed with costs. It may not and could not be argued successfully that any future rights were bound by the judgment appealed from.

(1) 43 Can. S.C.R. 82.

(2) 55 Can. S.C.R. 41.

IDINGTON J.—The motion to quash should be allowed with costs.

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DUFF J.—The appeal is incompetent on Mr. Belcourt's second ground; it is excluded by section 46.

ANGLIN J.—I am of opinion that this appeal is not within any of the clauses (a), (b) and (c) of section 46 of the "Supreme Court Act" and therefore does not lie. *Desormeaux v. St. Thérèse* (1), is directly in point. While inclined to think that this is a case of prohibition arising out of a criminal charge and as such likewise not within section 39 (c), I find it unnecessary to rest my judgment on that ground.

Appeal quashed with costs.

Solicitor for the appellant: *Armand Boily.*

Solicitor for the respondent: *Ths. Ls. Bergeron.*