1914

*Nov. 27.
*Dec. 29.

THE CANADIAN NORTHERN ONTARIO RAILWAY COMPANY.. } APPELLANT;

AND

ROWLAND SMITH ..... RESPONDENT.

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

Appeal—Expropriation—Application to appoint arbitrator—Persona designata—Amount in controversy—"Railway Act," R.S.C. 1906, *c.* 37, *s.* 196—*Jurisdiction of court—Practice.*

A railway company served notice of expropriation of land on the owner, offering $25,000 as compensation. It later served a copy of said notice on S., lessee of said land for a term of ten years. On application to a Superior Court judge for appointment of arbitrators S. claimed to be entitled to a separate notice and an independent hearing to determine his compensation. The judge so held and dismissed the application and his ruling was affirmed by the Court of King's Bench. The company sought to appeal to the Supreme Court of Canada.

Held, per Fitzpatrick C.J. and Idington J., following *Canadian Pacific Railway Co.* v. *Little Seminary of Ste. Thérèse* (16 Can. S.C.R. 606), and *St. Hilaire* v *Lambert* (42 Can. S.C.R. 264), that the Superior Court judge was *persona designata* to hear such applications as the one made by the company; that the case, therefore, did not originate in a superior court and the appeal would not lie.

Per Duff J.—The judge, under section 196 of the "Railway Act" acts as *persona designata* and no appeal lies from his orders under that section;— in this case, the application having been made to and the parties having treated the contestation as a proceeding in the Superior Court, which had no jurisdiction, the Court of King's Bench rightly dismissed the appeal from the order refusing to appoint arbitrators; and the appeal to the Supreme Court of Canada being obviously baseless should for that reason be quashed.

---

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

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

Held, per Davies, Duff, Anglin and Brodeur JJ., that as there was nothing in the record to shew that the amount in dispute was $2,000 or over, and no attempt had been made to establish by affidavit that it was, the appeal failed.

MOTION to quash an appeal from a decision of the Court of King's Bench, appeal side, Province of Quebec affirming the ruling of a judge in the Superior Court, District of Montreal, who dismissed an application for appointment of arbitrators in expropriation proceedings under the "Railway Act."

The material facts are stated in the above headnote.

Casgrain for the motion.

Rinfret K.C. contra.

THE CHIEF JUSTICE.—This is a motion to quash for want of jurisdiction. The facts are as follows:—

The Canadian Northern Railway Company, appellant, took proceedings under the Dominion "Railway Act" to expropriate a parcel of land in the parish of St. Laurent, Province of Quebec. Notice was given to the registered owners of the lot, but not at first to the respondent Smith, who had a ten years lease of the property. Later, on becoming aware of the lease, the company served another copy of the original notice on the owner and on the lessee declaring its intention to amend the notice of expropriation by putting Smith "en cause." The amount originally tendered by the company was $25,000, and this amount was not changed by the amended notice shewing the intention of the petitioner not to increase the amount of its original offer on account of the claim of the lessee.

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

The Chief Justice.

On the petition made by the owner to a judge of the Superior Court, to appoint an arbitrator under section 196 of the "Railway Act," Smith appeared to contest the right of the company on many grounds, the important one being that he, as lessee, was entitled to be served with a special notice and to have a special arbitration as to his compensation. This right the company denied.

The petition came on for hearing before Mr. Justice Beaudin, who found that Smith was entitled to a special notice and arbitration under the "Railway Act," independently of the arbitration of the landowner. His judgment was affirmed on appeal by the Court of King's Bench. The company now appeals to this court and have deposited their security in the court below. Smith moves to quash on the following grounds:—

1. That the judgment in the court below was interlocutory and related only to a matter of procedure;

2. There is no evidence that the amount involved exceeded $2,000;

3. That the controversy does not relate to title of land;

4. That the judgment of the Court below was a judgment *personâ designatâ* under special jurisdiction conferred by the "Railway Act" and there is no appeal.

Reference was made at the argument to *Turgeon* v. *St. Charles*(1), but that case has no application. It was there decided that a petition by a curator to a judge in chambers under the Quebec "Abandonment of Property Act" was a judicial proceeding within the

(1) 48 Can. S.C.R. 473.

meaning of that term in 46 or 37(*a*) of the "Supreme Court Act." However that may be it seems to me obvious that the words

suit, cause, matter or other judicial proceeding

in that section refer exclusively to civil proceedings which fall to be determined by the provincial courts and judges in the exercise of their ordinary jurisdiction in civil matters.

Here the judge to whom the application was made under the Dominion "Railway Act" was, it is true, a judge of the Superior Court of the Province, but for the purposes of that application his jurisdiction was "special and peculiar, distinct from, and independent of any power or authority with which he is clothed as a judge of that court." The Act conferring jurisdiction upon him provides all necessary materials for the full and complete exercise of such jurisdiction in a very special manner, wholly independent of, and distinct from, and at variance with, the jurisdiction and procedure of the court to which he belongs (sections 194, 195, 196, 197 *et seq.* "Railway Act"). As to appeal see section 209. Paraphrasing what the Chief Justice said in *Valin* v. *Langlois*(1), at pages 33, 34, I would say:—

Reading these special provisions in connection with the "Railway Act," and what has been said of the Act generally, I think it is not arriving at a forced or unnatural conclusion to say that Parliament intended to confer upon Provincial judges in Dominion railway expropriation matters an exceptional jurisdiction with a special procedure and with all materials for exercising such jurisdiction, and having nothing in common with the Provincial courts; that these judges and courts were merely utilized outside their respective jurisdiction to deal with this purely Dominion matter.

(1) 3 Can. S.C.R. 1.

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

The Chief Justice.

The case comes clearly within the rule in *Canadian Pacific Railway Co.* v. *Little Seminary of Ste. Thérèse* (1); *St. Hilaire* v. *Lambert* (2); *Toronto, etc., Railway Co. and Hendrie, In re* (3); *Cie du Chemin de fer de Montréal et Sorel* v. *St. Vincent* (4).

I am entirely at a loss to understand how this case ever reached the Court of King's Bench, but as it comes to us from that court and assuming that we have no power to inquire on this application into the proceedings resulting in the appeal below, I am of opinion that the case does not come within sections 46 or 37 (*a*) of the Act.

Motion to quash granted with costs.

DAVIES J.—I concur with Mr. Justice Anglin.

IDINGTON J.—I agree with the result reached by the Chief Justice.

DUFF J.—The jurisdiction created by section 196 of the "Railway Act" is not, I think, a jurisdiction given to the Superior Court or County Court as the case may be, but to the judge or judges of those courts. In other words, when acting under that section the judge does not exercise the powers of the court as such but the special powers given by the Act. From the refusal of the judge on an application under section 196 to appoint arbitrators no appeal would lie to the Court of King's Bench or to this court.

Mr. Rinfret appreciated this and argued that the contestation was an independent proceeding instituted in the Superior Court for the purpose of re-

(1) 16 Can. S.C.R. 606.
(2) 42 Can. S.C.R. 264.
(3) 17 Ont. P.R. 199.
(4) M.L.R. 4 Q.B. 404.

straining proceedings not in the Superior Court, but before the Judge acting as *persona designata*, and that it was from the judgment in this independent proceeding that the appeal was taken to the Court of King's Bench.

I have examined the proceedings carefully and my conclusion is that beginning with the petition under section 196 all the proceedings have been treated by the parties and by all the judges before whom they have come as proceedings in the Superior Court. However that may be the contestation has been most certainly treated as part of the proceedings instituted by the petition, and whether one holds that they were in the Superior Court or before the judge *extra muros*, the result is the same. If the first, then the Court of King's Bench was obviously right in dismissing an appeal from a judgment in proceedings not only misconceived, but incompetent; if the second, no appeal lay to the Court of King's Bench against a judgment given in proceedings under section 196 and none lies to this court.

It is true that the objection that the judgment of the Court of King's Bench was obviously right does not go to the jurisdiction of this court. But appeals have been quashed *in limine* where they must certainly have failed as being manifestly without foundation and this practice is beyond doubt a beneficent one.

It is hardly necessary to observe that no appeal lies from a *considerant*.

I may add that collecting as best I can the effect of the words "matter in controversy * * * amounts to the value or sum of $2,000" from the various pronouncements in which judges of this court have pro-

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

fessed to elucidate them, I am not convinced that the somewhat erratic course of decision permits me to hold that the condition of jurisdiction supposed to rest upon those words has been satisfied.

Anglin J.

ANGLIN J.—While adhering to the view expressed by my Lord the Chief Justice, in delivering the judgment of the court in *Finseth* v. *Ryley Hotel Co.*(1), and to what I stated in *Turgeon* v. *St. Charles*(2), at p. 483, as to the scope of section 37(*a*) of the "Supreme Court Act," I am nevertheless of the opinion that the respondent's motion to disallow the security filed by the appellant must succeed. If the proceeding before us is in the nature of a "judicial proceeding" within the purview of that section, "the matter in controversy" does not

> involve the question of, or relate to, any fee of office, duty, rent, revenue, sum of money payable to His Majesty, or any title to lands or documents, annual rents or other matters or things where rights in future might be bound.

There is nothing in the record to shew that the compensation which the respondent claims he should receive for the expropriation of his interests in the lands taken by the appellants

> amounts to the sum or value of $2,000.

Nor has any attempt been made under section 49*a* of the statute (3 & 4 Geo. V., ch. 51, sec. 5) to establish by affidavit that "the matter in controversy" amounts to that sum or value.

The motion should be granted with costs.

BRODEUR J.—C'est une motion pour faire renvoyer l'appel faute de juridiction.

(1) 43 Can. S.C.R. 646. (2) 48 Can. S.C.R. 473.

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

Brodeur J.

Les procédures en la présente instance ont commencé par une requête à un juge pour nommer des arbitres sous les dispositions de l'Acte Fédéral des Chemins de Fer, art. 196 et ses amendements. La demande au juge a été faite par le propriétaire du terrain à exproprier. Sur cette requête l'intimé, Smith, a comparu et, après avoir allégué qu'il était locataire de ce terrain, il a demandé, par une procédure qu'il a appelé contestation, que la compagnie appelante soit tenue de lui donner un avis spécial d'expropriation et de lui faire des offres particulières et qu'il ait le droit de proposer un des arbitres.

Le juge à qui cette procédure a été soumise a décidé que les prétentions de l'intimé étaient bien fondées et son jugement a été confirmé par la Cour d'Appel.

L'intimé par sa motion, dit que nous n'avons pas juridiction parce que la cause n'a pas originé en Cour Supérieure et il a cité à l'appui de ce point la cause *Canadian Pacific Railway Co.* v. *Ste. Thérèse*(1).

Il prétend en outre qu'il n'apparait pas que l'affaire en litige soit d'une valeur de deux mille dollars.

Je ne serait pas prêt à dire que la cause de *Canadian Pacific Railway Co.* v. *Ste. Thérèse*(1) s'appliquerait maintenant dans une cause comme celle-ci.

Il est bien vrai que cette cause de Ste. Thérèse avait trait à une procédure sous l'Acte des Chemins de Fer. Il s'agissait, en effet, d'une demande faite au juge pour retirer un montant qui avait été déposé en Cour par la Compagnie. Mais lorsque cette cause a été décidé l'acte qui était en force était le chapitre 135 des statuts refondus du Canada qui déclarait à la section 28 que la Cour Suprême n'avait juridiction que

(1) 16 Can. S.C.R. 606.

1914

CANADIAN NORTHERN ONTARIO RWAY. CO. v. SMITH.

Brodeur J.

dans les causes qui avaient été instituées originairement *dans la Cour Supérieure de la* province de Quebec.

En 1891, deux ans après la décision de la cause *Canadian Pacific Railway Co.* v. *Ste. Thérèse*(1), l'acte de la Cour Suprême a été amendé par 54-55 Vict. ch. 25, sec. 3, et il a été déclaré par cet amendement qu'il y avait appel même dans les causes qui n'avaient pas originé devant le Cour Supérieure.

De plus, nous avons décidé dans la cause de *Turgeon* v. *St. Charles*(2),

that a cause, matter or judicial proceeding originating on petition to a judge in chambers, in virtue of articles 875 and 876 of the Quebec Code of Civil Procedure is appealable to the Supreme Court of Canada.

Mais si j'hésite à déclarer mal fondé le premier point soulevé par l'intimé, je crois qu'il doit réussir sur son second point, quant au montant en litige.

Il n'apparaît pas au dossier si l'affaire en litige vaut $2,000. Il n'y a pas non plus d'affidavit de produit qui en établisse la valeur (3 & 4 Geo. V. ch. 51, sec. 5).

Dans la cause de *Turgeon* v. *St. Charles*(2), que je viens de citer, il y avait une preuve au dossier établissant combien valait le droit en litige et c'est pourquoi nous avons maintenu que nous avions juridiction. Mais dans le cas actuel, il n'y a pas de preuve au dossier de la valeur de ce droit et alors je suis d'opinion que cette motion de l'intimé devrait être accordé avec dépens.

Appeal quashed with costs.

Solicitors for the appellants: *Perron & Co.*
Solicitors for the respondent: *Casgrain, Mitchell & Co.*

(1) 16 Can. S.C.R. 606. (2) 48 Can. S.C.R. 473.