CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF TEMISCOUATA.

1912

*Nov. 6.
*Nov. 11.

LOUIS PLOURDE (PETITIONER) ..... APPELLANT;

AND

CHARLES A. GAUVREAU (RESPONDENT) ..... } RESPONDENT.

ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE CIMON.

Election law—Appeal—Preliminary objections—Interlocutory motions —Construction of statute—"Dominion Controverted Elections Act," R.S.C., 1906, c. 7, s. 64.

Several of the preliminary objections to a petition against the election of a member of the House of Commons of Canada having remained undisposed of, on the day before the expiration of the six months limited for the commencement of the trial by section 39 of the "Dominion Controverted Elections Act, R.S.C., 1906, ch. 7, the petitioner applied to a judge, by motions, (*a*) to obtain an enlargement of the time for the commencement of the trial, and, (*b*) to have a day fixed for the hearing on such preliminary objections. On appeal from the judgment dismissing the motions,

Held, that the judgment in question was not appealable to the Supreme Court of Canada under the provisions of section 64 of the "Dominion Controverted Elections Act." *L'Assomption Election Case* (14 Can. S.C.R. 429); *King's County Election Case* (8 Can. S.C.R. 192); *Gloucester Election Case* (8 Can. S.C.R. 204), and *Halifax Election Case* (39 Can. S.C.R. 401) referred to.

APPEAL from the judgment of Mr. Justice Cimon, in the Controverted Elections Court, in the matter of the controverted election of a member for the Electoral District of Temiscouata in the House of Commons of Canada, dismissing motions by the petitioner, (*a*) for enlargement of the time for the commence-

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

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ment of the trial, and, (*b*) to fix a day for the hearing of certain preliminary objections.

The circumstances in which the motions were made are stated in the head-note. The judgment appealed from was as follows:—

"CIMON J.—La cour, ayant entendu les parties par leurs avocats sur la motion du pétitionnaire pour faire prolonger le délai pour commencer l'instruction de la pétition d'élection en cette cause, examiné la procédure et délibéré:—

"Considérant qu'il n'y a pas lieu d'accorder la présente motion, car les raisons invoquées à l'appui ne sont pas suffisantes pour la justifier, rejette la dite motion avec dépens.

"La cour, ayant entendu les parties par leurs avocats sur la motion du pétitionnaire aux fins de faire fixer un lieu, un jour et une heure pour preuve et audition sur ce qui reste des objections préliminaires du défendeur, examiné la procédure et délibéré:—

"Considérant que les six mois fixés par la loi pour commencer le procès sur le mérite de la pétition d'élection expirent demain:—

"Considérant que ce délai de six mois n'a pas été prolongé: et considérant que ce délai de six mois n'étant pas prolongé, il deviendrait inutile de fixer un jour pour la production de la preuve sur les objections préliminaires, qui ne pourrait être qu'après l'expiration de six mois alors que la cour n'aurait plus de juridiction, met de côté, pour le moment, la présente motion, sauf à la reprendre si le délai pour le commencement du procès venait d'être prolongé."

T. J. Flynn K.C. for the appellant.

E. Lapointe K.C. for the respondent.

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THE CHIEF JUSTICE.—This is an appeal from a judgment of the Superior Court, at Fraserville, District of Kamouraska, dismissing two motions made on behalf of the petitioner; (*a*) to obtain an enlargement of the delay for the commencement of the trial, (*b*) to fix a day for proof and hearing on certain preliminary objections then undisposed of.

We were asked by the appellant's counsel to decide *in limine* the question of jurisdiction raised in the respondent's factum so as to avoid, if that point was decided against him, the necessity of a lengthy argument on the merits of the motions. I was of opinion at the hearing that we were without jurisdiction and in this opinion I am confirmed by subsequent examination of the authorities. Among a host of others I refer to the *L'Assomption Election Case*(1), in which Strong J. said, at page 432:—

> Nothing can be clearer than that appeals in controverted elections are limited to two matters only, viz.: First, an appeal from any decision, rule or order on preliminary objections to an election petition the allowing of which is final and conclusive and puts an end to the petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to the petition; and, secondly, an appeal from the judgment or decision on any question of law or of fact of the judge who has tried the petition. As the appeal is now presented, it is quite clear that it does not fall under either of these heads, and, consequently, this court has no jurisdiction.

See to the same effect the *King's County* (*N.S.*) *Election Case*(2), and the *Gloucester Election Case* (3). In the *Halifax Election Case*(4), Sir Louis Davies, speaking for the court, said, at page 404:—

> I do not think it is open to serious argument that every decision given by the trial judges, either before or during the progress of the

(1) 14 Can. S.C.R. 429.
(2) 8 Can. S.C.R. 192.
(3) 8 Can. S.C.R. 204.
(4) 39 Can. S.C.R. 401.

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trial, is at once and before the end of the trial appealable. Such a conclusion would defeat the object of the statute absolutely and make election trials a farce.

We may, therefore, safely say that it is now well settled by authority that this court is not competent to hear this appeal. If we were to hold that we are competent to hear an appeal in an intermediate proceeding like this appeals would be repeated in all election trials to the great oppression of the parties and to the injury of the public which demands that election trials should be speedily disposed of.

Of course we express no opinion on the merits.

The appeal is quashed for want of jurisdiction, costs to be taxed by the registrar as if motion made in accordance with rule.

DAVIES J. concurred with the Chief Justice.

IDINGTON J.—Unless we reverse the view taken of this statute in a long line of decisions in this court, this appeal must be dismissed with costs for the reason that we have no jurisdiction to interfere with the order appealed from.

DUFF J.—It has been pointed out time and again that the jurisdiction of the courts in respect of controverted elections is a very special jurisdiction and is strictly limited by the terms of the "Controverted Elections Act." Section 64 of that Act defines the jurisdiction of this court. There is obviously no jurisdiction under sub-section (*b*). Under sub-section (*a*) an appeal lies only from a

judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it has been allowed

would have that effect. The order sought to be impugned in the present proceedings is expressed in these terms:—

Met de coté pour le moment la présente motion sauf à la reprendre si le delai pour le commencement du procès venait d'être prolongé.

This is clearly not a "judgment, rule, order or decision" on a preliminary objection within the meaning of the provision quoted above. Consequently no appeal lies from it.

ANGLIN and BRODEUR JJ. concurred with the Chief Justice.

Appeal quashed with costs.

Solicitor for the appellant: *E. J. Flynn.*

Solicitors for the respondent: *Lapointe & Stein.*