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*Oct. 4
*Nov. 21.

THE SHAWINIGAN HYDRO-ELECTRIC COMPANY (DEFENDANTS) ..... APPELLANTS;

AND

THE SHAWINIGAN WATER AND POWER COMPANY (PLAINTIFFS) RESPONDENTS.

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

Appeal—Jurisdiction—Matter in controversy—Stare decisis—Municipal by-law—Injunction—Contract—Collateral effect of judgment—Construction of Statute—"Supreme Court Act," R.S.C. 1906, *c.* 139, *ss.* 36, 39(*e*), 46.

The action was brought by the respondents and other ratepayers of the Town of Shawinigan, against the town and the hydro-electric company, to set aside a by-law of the town corporation authorizing the purchase of certain lands with an electric power-house and plant from the hydro-electric company for $40,750, and for an injunction prohibiting the carrying into effect of the contract of sale. The final judgment in the Superior Court dissolved the injunction and dismissed the action, but on appeal by the plaintiffs the Court of King's Bench maintained the action and made the injunction permanent. On a motion to quash an appeal by the hydro-electric company to the Supreme Court of Canada,

Held, per Fitzpatrick C.J. and Girouard J., that the Supreme Court was competent to entertain the appeal under the provisions of section 39 (*e*) of the "Supreme Court Act." *The Bell Telephone Co.* v. *City of Quebec* (20 Can. S.C.R. 230) disapproved.

Per Duff and Anglin JJ.—*Semble.*—That the decision in *The Bell Telephone Co.* v. *City of Quebec* (20 Can. S.C.R. 230) is binding authority on the Supreme Court of Canada, but this case may be decided irrespective of it.

Per Idington, Duff and Anglin JJ. (Davies J. contra).—That, as the appeal was from the final judgment of the highest court of final resort in the Province of Quebec in an action instituted in a

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

court of superior jurisdiction for the purpose of preventing the consummation of a contract for a consideration exceeding $2,000, the Supreme Court of Canada was competent to entertain the appeal under sections 36 and 46 of the "Supreme Court Act."

Per Davies J. (dissenting).—That the controversy related merely to the validity of the by-law and did not involve the sum or value of $2,000, that the collateral or incidental effects of the judgment were not in question on the appeal, and that, therefore, the Supreme Court of Canada was not competent to entertain the appeal. *The Bell Telephone Co.* v. *City of Quebec* (20 Can. S.C.R. 230) followed.

MOTION to quash an appeal from the Court of King's Bench, appeal side (1), which reversed the judgment of the Superior Court, District of Three Rivers, and maintained the plaintiff's action with costs.

The action was instituted against the Town of Shawinigan and the Shawinigan Hydro-Electric Company by the Shawinigan Water and Power Company and others, ratepayers of the Town of Shawinigan, for the purpose of setting aside a by-law of the town corporation authorizing it to purchase the electric power-house and electric plant of the hydro-electric company and certain lands of the company used in connection with these works and installations, for the sum of $40,750, and also for an injunction to prohibit the town corporation carrying into effect the contract in respect thereof made with the hydro-electric company. In the Superior Court, the final judgment dissolved the injunction and dismissed the plaintiffs' action with costs. On an appeal by the plaintiffs, the Court of King's Bench reversed the decision of the Superior Court, maintained the conclusions of the action and made the injunction permanent. The hydro-electric company then brought an appeal to the Supreme Court of Canada.

(1) Q.R. 19 K.B. 546.

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The questions raised on the motion by the present respondents to quash the appeal are stated in the judgments now reported.

Holden supported the motion.

Aimé Geoffrion, K.C. contra.

THE CHIEF JUSTICE.—This is an action brought by a ratepayer in the Superior Court, at Three Rivers, to set aside a by-law of the corporation of the Town of Shawinigan to which was joined an application for an interlocutory injunction. The action was dismissed by the first court; but on appeal to the Court of King's Bench that judgment was set aside, the by-law was quashed and the interlocutory injunction declared absolute. On this appeal the respondents challenge our jurisdiction on the ground that in proceedings to quash or annul by-laws commenced by action in the Superior Court in the Province of Quebec there is no appeal here.

A number of decisions of this court bearing on this question have been cited at bar, and others are to be found in Mr. Cameron's very useful book on the practice of this court. I confess that I find it difficult to reconcile all those decisions and so I am driven back upon the sections of the statute which give an appeal to this court in cases arising in the Province of Quebec. Section 39, sub-section (*e*), gives an appeal

> in any case in which a by-law of a municipal corporation has been quashed by rule or order of court, or the rule or order to quash had been refused after argument.

In view of the fact that this section applies to all the provinces of Canada, I am of the opinion that the

word "quash" should not receive a narrow interpretation and be held to apply only to proceedings by petition or motion without a writ, such as we find in the Province of Ontario, but must be read as synonymous with "annul" or "make void." Whether this view be correct or not, an appeal is given by section 36 of the Supreme Court Act

> from any final judgment of the highest court of final resort now or hereafter established in any province of Canada, whether such court is a court of appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court.

The generality of this section is not restricted in the Province of Quebec where a municipal by-law is attacked because section 47 expressly provides that section 46, which places a limitation upon appeals from that province, shall not apply to appeals in cases of municipal by-laws.

Unfortunately we have the case of *The Bell Telephone Co.* v. *The City of Quebec*(1), in which it was held that, in view of previous decisions, and more expressly of the ruling in *The City of Sherbrooke* v. *McManamy*(2), this court is without jurisdiction to hear appeals in cases in which the validity of a by-law is attacked by direct action as in the present case; the judgment in such an action not being "a rule or order" quashing a by-law, within the meaning of section 39, sub-section (*e*). On examination, I find that *The City of Sherbrooke* v. *McManamy*(2), upon the authority of which *The Bell Telephone Co.* v. *The City of Quebec*(1) was decided, was an action to recover taxes due the plaintiff municipality under its by-law, and there Ritchie C.J. says, at page 596:

(1) 20 Can. S.C.R. 230. (2) 18 Can. S.C.R. 594.

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No question whatever as to quashing the by-law arises in this case;

and Taschereau J. says, at page 597:

There is no by-law quashed by a rule or order here. In fact, there is none quashed at all by the judgment appealed from. We are all agreed on this point, I believe.

It is difficult, therefore, to see the relation between these two cases and how the latter could serve as a precedent for the former. In the case of *Webster* v. *The City of Sherbrooke*(1), where the validity of a by-law was attacked by petition, the question of jurisdiction was raised, the court dismissed the motion to quash and disposed of the proceeding on the merits. Strong C.J. said, at page 53:

This was an application to quash a by-law and not a case like the cases referred to and decided of *the County of Verchères* v. *The Village of Varennes*(2); *The City of Sherbrooke* v. *McManamy* (3); and others decided in this court, as in all those cases it was in a private action that the by-laws were impugned and the proceedings were not to quash or annul the by-laws.

Subsequently, in *The City of St. Cunégonde* v. *Gougeon*(4), a case in which the proceedings were initiated by petition under the provisions of the very same Act (The Town Corporations Act, R.S.Q. section 4389), as in *Webster* v. *The City of Sherbrooke*(1), it was held:

Where the Court of Queen's Bench has quashed such an appeal for want of jurisdiction no appeal lies to the Supreme Court of Canada from its decision.

So that, if *The Bell Telephone Co.* v. *The City of Quebec*(5) and *The City of St. Cunégonde* v. *Gougeon*(4) are well decided, there can be no appeal here

(1) 24 Can. S.C.R. 52.
(2) 19 Can. S.C.R. 365.
(3) 18 Can. S.C.R. 594.
(4) 25 Can. S.C.R. 78.
(5) 20 Can. S.C.R. 230.

in any proceedings in which a by-law is attacked in the Province of Quebec, whether by petition or by an ordinary writ of summons. The distinction made in *Webster* v. *The City of Sherbrooke* (1) by Taschereau J. between cases in which proceedings to set aside a by-law are commenced by petition and those in which the validity of a by-law is attacked by direct action by any party interested, with respect to the effect of the judgment, is, I respectfully submit, not founded. Under the Municipal Code, arts. 698 and 100, and under the "Town Corporations Act," R.S.Q. section 4389, the validity of a by-law may be attacked by petition by a municipal elector; but this does not exclude the common law right to proceed by writ. Any person whose rights or property may be injuriously affected by the acts of a corporation can invoke the ordinary procedure of the courts to get redress for his grievances. *County of Arthabaska* v. *Patoine* (2); *Coriveau* v. *Corporation de St. Valier* (3), at page 89; *Farwell* v. *City of Sherbrooke* (4); *Bélanger* v. *Ville de Montmagny* (5).

And whether the proceeding is begun by petition or by writ, the result as to the validity of the by-law is the same. In either case if the action is maintained, the judgment annuls the by-law which ceases to have any force or effect thereafter; (arts. 461-462 Municipal Code). The only difference being that if the proceedings are begun by petition either under the Municipal Code or under the "Town Corporations Act," there is no appeal to the provincial court of appeal, (art. 1077 Municipal Code and

(1) 24 Can. S.C.R. 52.
(2) 9 Legal News 82.
(3) 15 Q.L.R. 87.
(4) Q.R. 24 S.C. 350.
(5) 10 Rev. de Jur. 491.

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section 4614 "Town Corporations Act") and, consequently, no appeal to this court. But in both cases the proceeding is disposed of by a judgment which I hold to be the equivalent of the rule or order mentioned in section 39 (*e*). Sub-section (*d*) of section 2 of the "Supreme Court Act" enacts that "judgments" when used with reference to the court appealed from, includes any judgment, rule, order, decision, decree, decretal order or sentence thereof, etc. In my opinion, therefore, *Bell Telephone Co.* v. *City of Quebec* (1) was decided on an erroneous impression of the effect of *City of Sherbrooke* v. *McManamy* (2) and the terms of the "Supreme Court Act" are broad enough to provide an appeal here in all proceedings to quash or annul a by-law when the right of appeal to the provincial court of last resort is not taken away by the provincial legislature. Vide *per* Strong C.J. in *City of St. Cunégonde* v. *Gougeon* (3) at page 83.

I would dismiss motion with costs.

GIROUARD J.—La Shawinigan Water and Power Co. demande par sa requête à la cour supérieure des Trois-Rivières, qu'un règlement municipal de la corporation de la ville de Shawinigan Falls soit déclaré illégal, nul et de nul effet et qu'il soit annullé. Voici les conclusions de la demande:

Pourquoi les demandeurs concluent à ce que le règlement ci-dessus mentionné, passé et adopté par le conseil municipal de la corporation défenderesse à sa séance du 24 août dernier, et approuvé à son autre séance du 31 août dernier, soit déclaré illégal, nul et de nul effet, à ce qu'il soit cassé et annullé et à ce que l'ordonnance d'injonction interlocutoire émanée en cette cause à la demande de

(1) 20 Can. S.C.R. 230. (2) 18 Can. S.C.R. 594.
(3) 25 Can. S.C.R. 78.

la demanderesse contre les défendeurs et les mis-en-cause, soit par le jugement final déclarés permanente et péremptoire et à ce qu'il soit en conséquence enjoint aux défendeurs et aux mis-en-cause de se conformer permannement aux conclusions contenues dans la dite requête demandant l'émanation de la dite ordonnance, et ce, sous les pénalités pourvues par la loi en pareil cas, le tout avec dépens contre les défendeurs dans tous les cas, et contre les mis-en-cause au cas de contestation de leur part.

Le juge de première instance a débouté l'action des demandeurs avec dépens; mais, en appel, ce jugement fut renversé et le règlement en question fut déclaré illégal, et cassé et annullé avec dépens contre la corporation municipale; différant, les honorables juges Lavergne et Archambault. Voici le dispositif du jugement en appel:

Maintient l'appel et l'action, déclare illégal le règlement passé par le conseil de la corporation intimée le 24 août, 1908, et approuvé le 31 août, 1908; casse et annule le dit règlement, déclare absolue et péremptoire l'ordonnance d'injonction interlocutoire émanée en cette cause et enjoignant à la corporation intimée ainsi qu'aux mis-en-cause de ne pas donner effet au contrat basé sur le dit règlement ni de signer les billets promissoires, le tout avec dépens tant de la cour supérieure que de cette cour contre l'intimée, la corporation de la ville de Shawinigan Falls. Dissidents, les honorables juges Lavergne et Archambault.

La Shawinigan Hydro-Electric Co., à son tour, inscrit en appel devant cette cour; et la compagnie qui a réussi devant la cour d'appel fait motion que l'appel devant nous soit cassé faute de juridiction. Avons-nous juridiction? Voilà toute la question.

La constitution de la cour suprême a été plusieurs fois remodelée et a été le sujet d'un grand nombre de discussions devant nous, toujours au sujet de notre juridiction; bien qu'il ne semble pas que, sur le sujet qui nous occupe présentement, la législation aît varié. La section 39, chapitre 139, paragraphe (*e*), sous le titre "Loi concernant la cour suprême," déclare qu'il y a appel à la cour suprême

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dans tous les cas où un règlement d'une corporation municipale a été infirmée par règle ou ordonnance d'une cour, ou que la règle ou l'ordonnance pour l'infirmer a été refusée après audition.

C'est à-peu-près le langage du premier statut établissant la cour suprême, 38 Vict. ch. 11, sec. 17.

Cette disposition s'applique à toutes les provinces, même Québec. Il est vrai que par les clauses 44, 45 et 46 certaines exceptions et restrictions ont été créées en faveur de cette province; mais la section 47 déclare qu'elles n'auront pas d'application dans le cas de règlements municipaux.

En face d'un texte aussi positif, il est difficile de se rendre compte que la jurisprudence aît hésité et aît même varié. On cite surtout quatre précédents qui nient l'appel, dit-on.

City of Sherbrooke v. *McManamy*(1); mais à en juger par le rapport de la cause il ne paraît pas qu'il s'agissait de la nullité d'un règlement, ni que la cour ne l'aît prononcée.

County of Verchères v. *Village of Varennes*(2); même objection; il ne s'agissait pas ici d'un règlement mais d'un procès-verbal.

Egalement *Toussignant* v. *County of Nicolet*(3), que l'on cite contre notre juridiction, ne s'applique guère; car, en cette dernière cause, il ne s'agissait pas d'un règlement, mais d'un procès-verbal.

Bell Telephone Co. v. *City of Quebec*(4); ici la cour d'appel refusa d'annuller un règlement municipal pour des raisons que je ne puis apprécier, car je ne puis comprendre que l'ordre ou jugement de la cour d'appel ne soit pas la "règle ou ordonnance d'une cour" dans le sens de la clause 39 de l'acte de la cour

(1) 18 Can. S.C.R. 594.
(2) 19 Can. S.C.R. 365.
(3) 32 Can. S.C.R. 353.
(4) 20 Can. S.C.R. 230.

suprême. Autrement il faudrait décider qu'il ne peut jamais y avoir d'appel à cette cour d'un règlement municipal dans la province de Québec.

Le code municipal et les chartes de plusieurs villes donnent à tout contribuable un mode sommaire d'attaquer un règlement municipal devant un tribunal spécial, le plus souvent la cour de circuit ou encore la cour du recorder, avec le droit d'appel à une autre cour indiquée; et nous venons de décider dans la cause de *Montreal Street Railway Co.* v. *City of Montreal* (1909), (1), que dans des cas comme ceux-là il n'y a pas d'appel à cette cour. A moins de donner le droit d'appel à un intéressé dans une action de droit commun instituée, comme dans l'espèce, en cour supérieure, un règlement municipal ne pourrait être examiné et revisé par cette cour. Nous devons cependant donner effet à la clause 39, par. (*e*), de l'acte de la cour suprême, qui ne distingue pas entre des procédés en nullité de droit commun et ceux indiqués au code municipal; dans l'un comme dans l'autre cas, la clause 39 ne limite pas l'effet de la nullité d'un règlement municipal aux parties ayant un intérêt spécial et distinct de celui des contribuables ordinaires. Elle permet l'annullation d'un règlement municipal sans restriction, c'est-à-dire à toutes fins quelconques à l'égard de tout le monde.

Enfin il ne manque pas de décisions où cette cour a exercé juridiction dans des appels de jugements sur des règlements municipaux: *Webster* v. *City of Sherbrooke*(2); *Longueuil Navigation Co.* v. *City of Montreal*(3); *Town of Chicoutimi* v. *Price*(4).

Pour ces raisons je suis d'avis de renvoyer la motion de l'intimée avec dépens.

(1) 41 Can. S.C.R. 427.
(2) 24 Can. S.C.R. 52.
(3) 15 Can. S.C.R. 566.
(4) 29 Can. S.C.R. 135.

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DAVIES J. (dissenting).—If the question of our jurisdiction to hear an appeal from the Province of Quebec in a judgment such as the one in this case annulling and declaring void a by-law of a municipality was *res integra,* I would accept the reasoning and conclusion of the Chief Justice affirming that jurisdiction. Unfortunately there is the case of *The Bell Telephone Co.* v. *The City of Quebec*(1), which expressly decides the other way. Until that decision is overruled I feel it binding upon me.

Upon the question whether the matter in controversy amounts to the sum of $2,000, I am unable to agree with the members of the court who hold that it does and dismiss the motion to quash on that ground.

The real matter in controversy is the validity or invalidity of the by-law. With the collateral or incidental effect of a judgment upon that point one way or the other we are not concerned. Whether it results in affecting property over $2,000 or not is not the question. For these reasons I am constrained to allow the motion to quash.

IDINGTON J.—I think the right of appeal exists by virtue of section 46 and sub-section (*c*) of the "Supreme Court Act."

The substance of the matter directly in controversy here is the validity of a contract plainly involving twenty times the measure of importance sub-section (*c*) assigns as one of the several tests thereof to be held sufficient for founding the jurisdiction of the court.

Matters of quite as much importance may be often indirectly involved and yet not fall within the defini-

(1) 20 Can. S.C.R. 230.

tion in question. This matter in controversy herein is directly (and plainly so) involved.

The incidental feature arising from the validity of the by-law being in question does not seem to me to affect the question any more than it might have done in *Ville de St. Jean* v. *Molleur*(1), which involved as a consequence of a rescission of the contractual relation, the rescission of a by-law.

The jurisdiction to hear was attacked in that case, and though the exact point here in question was not taken, it is hardly likely we would have heard the case if the incident that the validity of a by-law being involved should have made any difference.

Moreover, suppose a municipality through its council had entered without any by-law at all, into some such contract, and a ratepayer, as here, had chosen to attack the transaction in the courts as invalid, and the third party concerned as well as the municipal authorities, were in course of such attack enjoined from acting under such contract merely because the court so enjoining held, perhaps erroneously, a by-law was needed. Could it be said that the third party whose rights were so adjudicated upon could have no relief or appeal, though his contention might be that no by-law was needed? If in truth no by-law was necessary in law in the case put, then, if this motion is founded on sound principle, the third party would be deprived of his rights (perhaps involving ten times the limit assigning a right of appeal) and of his right to maintain such a contention.

I would dismiss the motion with costs.

DUFF J.—I agree with Mr. Justice Anglin.

(1) 40 Can. S.C.R. 139, 629.

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ANGLIN J.—With profound respect for the opinions to the contrary of my Lord, the Chief Justice, and my brother Girouard, I incline to the view that we are constrained by the authorities in this court to hold this case to be not within section 39 (*e*) of the "Supreme Court Act." *Bell Telephone Co.* v. *City of Quebec*(1); *Toussignant* v. *County of Nicolet*(2).

But, without determining that question, I think it clear that the motion to quash should be dismissed because this appeal is from the "final judgment of the highest court of final resort" in the province in an action instituted in a superior court (section 36), of which the substantial purpose is to prevent the consummation of a contract for the sale of real estate at a price far exceeding $2,000. The real matter in controversy is the right of the appellants to compel the municipality to take the land which it has agreed to buy and to make payment to them of the purchase money. This the plaintiff seeks by injunction to prevent. Such is the direct — not merely the collateral or consequential — effect of a judgment for the plaintiff. It is in fact an integral part of the judgment itself. The matter directly in controversy, therefore, in my opinion, "amounts to the sum or value of two thousand dollars," (section 46(*c*)). This suffices to establish the jurisdiction of this court to entertain the appeal. *Coté* v. *The James Richardson Co.*(3), at page 49; *Robinson, Little & Co.* v. *Scott & Son*(4).

The special jurisdiction conferred by section 39 (*e*) is supplementary. It does not exclude the general appellate jurisdiction conferred by section 36 in a

(1) 20 Can. S.S.R. 230.
(2) 32 Can. S.C.R. 353.
(3) 38 Can. S.C.R. 41.
(4) 38 Can. S.C.R. 490.

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case otherwise appealable, although the validity of a municipal by-law may be brought in question in the action.

That the appellants, who were made defendants in this action and who are bound by the existing judgment declaring their contract with the municipality to be illegal and void, have sufficient interest to give them a right of appeal to this court, I entertain no doubt.

The motion to quash should be dismissed with costs.

Motion dismissed with costs.

Solicitors for the appellants; *Geoffrion, Geoffrion & Cusson.*

Solicitors for the respondents: *Meredith, Macpherson, Hague & Holden.*