

ARBUTHNOT BLAINE AND OTHERS  
 LICENSE COMMISSIONERS  
 FOR CITY OF SAINT JOHN,  
 NEW BRUNSWICK . . . . . } APPELLANTS;

1908  
 }  
 \*Nov. 24.  
 —

AND

WILLIAM JAMIESON . . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

*Appeal—Jurisdiction—Stated case—Final judgment—Origin in Superior Court—Supreme Court Act, ss. 35 and 37.*

An information was laid before the police magistrate of St. John, N.B., charging the License Commissioners with a violation of the Liquor License Act by the issue of more licenses in Prince Ward than the Act authorized. The informant and the Commissioners agreed to a special case being stated for the opinion of the Supreme Court of New Brunswick on the construction of the Act and that court, after hearing counsel for both parties, ordered that "the Board of License Commissioners for the City of Saint John be, and they are hereby, advised that the said Board of License Commissioners can issue eleven tavern licenses for Prince Ward in the said City of Saint John and no more (38 N.B. Rep. 508). On appeal by the Commissioners to the Supreme Court of Canada:

*Held*, that the proceedings did not originate in a superior court, and are not within the exceptions mentioned in sec. 37 of the Supreme Court Act; that they were *extra cursum curiæ*; and that the order of the court below was not a final judgment within the meaning of sec. 36; the appeal, therefore, did not lie and should be quashed.

**A**PPEAL from a decision of the Supreme Court of New Brunswick(1) on a stated case.

---

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

(1) 38 N.B. Rep. 508.

1908  
BLAINE  
v.  
JAMIESON.

---

The appellants as License Commissioners for the City of St. John, N.B., were charged with the duty of issuing licenses for the sale of liquor in the city under the provisions of the Liquor License Act, C.S.N.B. 1903, ch. 22. An information was laid against them in the police court of the city by the respondent charging them with violation of the Act by granting more licenses than were authorized in Prince Ward. The prosecution on the information was stayed, the informant and the Commissioners agreeing to state a case for the opinion of the Supreme Court of the province on the question raised thereby. The stated case set out various facts affecting the matter and concluded as follows:

“The opinion of this honourable court is desired and is respectfully asked to the following question, namely:

“How many tavern licenses are the said commissioners authorized by law to issue in Prince Ward, in said City of St. John, the population of said ward being four thousand seven hundred and sixty, as herein stated?”

The case was argued before the Supreme Court of New Brunswick and the formal order taken out after judgment was pronounced was that the court, having taken time to consider, doth now order that the Board of License Commissioners for the City of Saint John be, and they are hereby advised that the said Board of License Commissioners can issue eleven tavern licenses for Prince Ward, in the said City of Saint John, and no more.

The Commissioners appealed from this order to the Supreme Court of Canada.

*Skinner K.C.* and *Earle K.C.* for the appellants.

*Hazen K.C.*, Attorney-General of New Brunswick,  
for the respondent.

1908  
BLAINE  
v.  
JAMESON.

The objection to the jurisdiction taken by respondent in his factum was not urged at the outset, but was raised by the court and then discussed by counsel.

THE CHIEF JUSTICE.—The respondent, in his factum, takes exception to the jurisdiction of this court. This objection should have been raised by a motion to quash the appeal presented on the first day of the present session of the court (rule 4), and although not insisted upon now the objection cannot be overlooked, as this appeal should never have been taken. The proceedings originated by way of information laid against the defendants, now appellants, in the police court at St. John, and came to the Supreme Court of New Brunswick "*extra cursum curiæ*" by consent of the parties on a special case stated by Mr. Justice McLeod for the purpose of obtaining the opinion of that court on the construction of a New Brunswick statute (the Liquor License Act, ch. 22, Consolidated Statutes, 1903). The defendants by the said information were charged before the police magistrate of the City of St. John with having issued more tavern licenses for the year 1907 in Prince Ward, in that city, than are allowed by the License Act; and it was by the parties thought desirable that the magistrate, before disposing of the complaint, should be instructed as to the meaning of the Act by the Supreme Court of New Brunswick; and, by these proceedings, we are asked to revise the instruction or

1908  
 BLAINE  
 v.  
 JAMIESON.  
 The Chief  
 Justice.

advice given by that court. I do not know that, under ordinary circumstances, it would be necessary to do more than to state these facts to justify the dismissal of the appeal. It is apparently necessary, however, for me to say, for the benefit of the parties in this case, that an appeal lies here from the final judgment of the highest court of final resort of the province when the court of original jurisdiction is a superior court (sec. 36) and in the class of cases provided for by section 37 of the Act of which this is not one; and it is difficult to conceive how it could be argued, not successfully, but with any shew of reason, that the instruction or advice given to the magistrate on this special case can be called a final judgment; or that the police magistrate can be described as a superior court (section 36) or a court of first instance possessing concurrent jurisdiction with a superior court (section 37). The Supreme Court *en banc* advises that, under the statute, the Board of License Commissioners of the City of St. John can issue eleven tavern licenses for Prince Ward and no more. What the effect of that advice may be on the magistrate we are not in a position to say, nor should we be concerned to know. We have been urged to consider and decide the question submitted, or, to state the position more accurately, we are asked to say that we agree with or dissent from the advice given to the magistrate by the Supreme Court of New Brunswick on the ground that a question affecting the public is involved. Our jurisdiction cannot rest on such a foundation, and if there was any doubt as to our jurisdiction, which there is not, we could not entertain this appeal: *Cully v. Ferdais*(1).

By consent of the parties no costs will be granted, although, personally, I would have been of opinion to give effective sanction to rule 4 by condemning the respondent to pay a portion of the costs here.

1908  
 BLAINE  
 v.  
 JAMIESON.  
 ———  
 The Chief  
 Justice.  
 ———

GIROUARD J.—We have no jurisdiction for two reasons. First, the proceedings did not originate in a superior court as required by section 36 of the Supreme Court Act. Secondly, the appeal is not from a final judgment within the meaning of that term in the same section.

DAVIES, IDINGTON and DUFF JJ. concurred with the Chief Justice.

*Appeal quashed without costs.*

Solicitor for the appellants: *C. N. Skinner.*

Solicitor for the respondent: *J. Douglas Hazen.*

---