

THE MONTREAL STREET RAIL- } APPELLANTS;
 WAY COMPANY (DEFENDANTS) .. }

1909

*Feb. 16.
 *March 29.

AND

THE CITY OF MONTREAL (PLAIN- } RESPONDENT.
 TIFF)

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN
 REVIEW, AT MONTREAL.

Collection of municipal taxes—Action in Recorder’s Court—Montreal city charter, 62 V. c. 58 (Que.)—Appeal—Jurisdiction—Judgment by Court of Review—Special tribunal—Court of last resort—Supreme Court Act, R.S. [1906] c. 139, s. 41.

Under the provisions of the Montreal City Charter, 62 Vict. ch. 58, sec. 484 (Que.), an action was brought by the city, in the Recorder’s Court, to recover taxes on an assessment of the company’s property in the city. Judgment was recovered for \$39,691.80, and an appeal to the Superior Court, sitting in review, under the provisions of the Quebec statute, 57 Vict. ch. 49, as amended by 2 Edw. VII. ch. 42, was dismissed. On an application by the company to affirm the jurisdiction of the Supreme Court of Canada to hear an appeal from the judgment of the Court of Review,

Held, that the Superior Court, when exercising its special appellate jurisdiction in reviewing this case, was not a court of last resort created under provincial legislation to adjudicate concerning the assessment of property for provincial or municipal purposes within the meaning of section 41 of “The Supreme Court Act,” R.S. [1906] ch. 139, and, consequently, there could be no jurisdiction to entertain the appeal.

MOTION to affirm the jurisdiction of the Supreme Court of Canada to entertain an appeal from the judgment of the Superior Court, sitting in review, at Mont-

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

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real, affirming a judgment of the Recorder's Court for the City of Montreal, by which the defendants were condemned to pay to the city the sum of \$39,691.80, for taxes due on their property assessed within the City of Montreal.

The action was instituted in the Recorder's Court for the recovery of taxes claimed by the city. That court has jurisdiction in such cases by virtue of section 484 of the Charter of the City of Montreal, 62 Vict. ch. 58, which provides in part as follows: "The Recorder's Court has the jurisdiction of a recorder and shall hear and try summarily, 1. Any action brought in virtue of any by-law or resolution of the council for the recovery of any sum of money due to the city for any assessment," etc.

An appeal lies from the judgment of the Recorder's Court to the Superior Court, sitting in review, under 57 Vict. ch. 49, as amended by 2 Edw. VII. ch. 42, which provides in part as follows: "In all cases or proceedings when the amount in dispute relates to one or more municipal or school taxes or assessments or fines or penalties imposed by any municipal by-law, exceeding in all the sum of five hundred dollars, there shall be an appeal from the final decision of any recorder or Recorder's Court to the Superior Court, sitting in review."

The charter also, by sections 383 and 384, in part provides as follows:

"383. Any ratepayer having duly complained of any entry or omission in the said rolls, or either of them, who may think himself aggrieved by the decision of the assessors, may within eight days, appeal from said decision by petition to the Recorder's Court, which shall have jurisdiction in all such cases.

"384. A final appeal shall lie from any decision rendered by the Recorder's Court in respect of any entry on the valuation and assessment roll or on the tax roll, to any one of the judges to the Superior Court * * * and such judgment shall be final."

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In the Recorder's Court the city recovered judgment for \$39,691.80, and the company appealed to the Superior Court, sitting in review, where the judgment of the Recorder's Court was affirmed. The company then sought to appeal to the Supreme Court of Canada under the provisions of section 41 of the "Supreme Court Act."

The application by the motion was made upon a reference to the court by the registrar in chambers.

Campbell K.C. appeared in support of the motion.

Atwater K.C. contra.

THE CHIEF JUSTICE.—This is an application to affirm the jurisdiction of this court, in these circumstances:—

The appellants were assessed in the years 1902-03, 1904-05 upon their property in the City of Montreal for the sum of \$36,691.80, and, in 1906, an action was brought in the Recorder's Court to recover this amount and the company was condemned to pay. From this judgment an appeal was taken to the Superior Court, sitting in review, and the judgment of the Recorder's Court was confirmed. From that judgment the company wishes to appeal here, invoking section 41 of the "Supreme Court Act."

In my opinion that section has no application to the facts of this case. This action was brought in the

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Recorder's Court, which is not a superior court of original jurisdiction, but a municipal court, clothed by statute with special authority to hear cases for the recovery of any sum of money due to the city for any assessment. From the judgment of that court, in these special cases, the same statute gives an appeal to the Court of Review. It cannot be said that, when exercising this special appellate jurisdiction, the Court of Review is a court of last resort, created under provincial legislation to adjudicate concerning the assessment of property within the meaning of section 41. If the appeal was from a judgment of one of the judges of the Superior Court, to whom an appeal is given by article 384 of the Montreal City Charter from the decision of the Recorder's Court on a complaint against the decision of the assessor, under section 383 of the said charter, then section 41 of our Act might apply. It is to be observed that the Court of Review is not a court of final resort in the province.

There is no appeal from that court except in certain exceptional cases of which this is not one.

GIROUARD J. concurred in the judgment rejecting the motion with costs for the reasons given by the Chief Justice.

DAVIES J.—I concur in rejecting the motion to affirm our jurisdiction.

IDINGTON and DUFF JJ. also concurred in the rejection of the motion with costs for the reasons given by the Chief Justice.

Motion refused with costs.