

Privy Council Appeal No. 65 of 1921.

The Canada Cement Company, Limited - - - - *Appellants*

La Ville de Montréal Est - - - - *Respondent*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1921.

Present at the Hearing :

LORD BUCKMASTER.

LORD ATKINSON.

LORD SUMNER.

LORD WRENBURY.

LORD CARSON.

[*Delivered by* LORD BUCKMASTER.]

By Section 5755 of the Cities' and Towns' Act of Quebec, 1909,
it is provided that :—

“ The payment of municipal taxes may be claimed by an action brought in the name of the corporation, before the Magistrate's Court, or the Circuit Court for the county or district, or before the Mayor, or two or more councillors acting *ex officio* as justices of the peace, or before the Recorder's Court if there be one.”

Their Lordships are unaware of any statutory definition of a Circuit Court for the county or district and none has been called to their attention ; but they have been definitely informed that a Circuit Court for the district—or, as it is generally known, a District Court—is the Court sitting at the chief place in the county, and the other Courts are called the County Courts.

The respondents, who are the Corporation for the town of Montreal East, availed themselves of the provision of the section above quoted and took proceedings against the appellants, the Canada Cement Company, in the Circuit Court, for the recovery of taxes which had been imposed upon them to the extent of \$60,253. On the 5th January, 1921, Mr. Justice Archambault, sitting in the Circuit Court, gave judgment for the respondents as against the appellants for the amount claimed. From this judgment the appellants appealed to the Court of King's Bench for the Province of Quebec, but on a motion made to dismiss the appeal for incompetency the Court held, by a majority of three judges to two, that the judgment of the Circuit Court was final and was not susceptible of appeal. From that judgment the present appeal has been brought.

The whole question that is raised is covered by determining whether or no the judgment of the Circuit Court at the chief place of its district was final. The respondents contend that it is, on three distinct grounds, the first being that, as the jurisdiction of the Circuit Court owed its origin to the Cities' and Towns' Act, 1909, all rights of appeal must be found in that statute, and none are thereby conferred. Their Lordships do not think that this contention is sound. The power that was given to take proceedings before the different Courts mentioned in Section 5755 enabled those proceedings to be taken as part of the ordinary business of the Courts mentioned, and the rights of appeal that exist from judgments given by those Courts are applicable to such proceedings. The case of the *Postmaster-General v. National Telephone Company*, 1913, A.C. 546, is an illustration of this principle. The statement of Mr. Justice Dorion, in the case reported in 45 Superior Court Official Reports, p. 109, at p. 121, where he points out that there is a right of appeal under Section 5533 where penalties can be recovered in the Civil Courts, is doubtless based upon this view, and their Lordships think it correct. The judgment of Chief Justice Lemieux in the same case, where he says that no appeal lies under Section 5755, does not appear necessarily to depend upon the absence of appeal provisions in the statute, but may be due to other considerations.

The second and by far the most important argument urged by the respondents is that the Circuit Court is created and governed by the provisions of the Code of Civil Procedure, and that in order to ascertain if any appeal exists in such a case as the present, it is essential to ascertain what are the powers conferred by the Code, and, according to their contention, by these no right of appeal exists. Section 54 of the Code establishes the Circuit Court and defines and limits its jurisdiction. It is in the following terms :—

“ 54. The Circuit Court has ultimate jurisdiction to the exclusion of the Superior Court :—

“ (1) In all suits wherein the sum claimed or the value of the thing demanded is less than one hundred dollars, saving the exceptions contained in the following Article and such cases as fall exclusively within the jurisdiction of the Exchequer Court of Canada, and suits in matters of petition of right ;

“(2) In all suits for school-taxes or school-fees, and all suits concerning assessments for the building and repairing of churches, parsonages, and churchyards, whatever may be the amount of such suits.”

From this it will be seen that, so far as this section is concerned, the District Court as part of the Circuit Court has no jurisdiction in cases of \$100 and upwards excepting in cases relating to school-taxes, school-fees, and other matters specifically mentioned in Sub-section (2). With regard to both branches of the section, its jurisdiction is ultimate and complete. The County Court—that is, a Court sitting elsewhere than at the chief place of the district—has, however, in addition to the jurisdiction conferred upon it by Section 54, a further jurisdiction between \$100 and \$200, conferred upon it by Section 55, but this is subject to appeal. It also has jurisdiction with regard to matters specified in Sub-section (2) of Section 55. There is, therefore, so far as these sections are concerned, no power whatever to appeal from any judgment of the District Court.

Section 52 provides for the Court to which the appeals lie. The first three sub-clauses, which are all that are material, are as follows :—

“ 52. An appeal lies to the Court of Review :—

“(1) From every final judgment of the Superior Court or of the Circuit Court, susceptible of appeal to the Court of King's Bench ;

“(2) From any final judgment of the Superior Court in suits in which the sum claimed or the value of the thing demanded is less than five hundred dollars ;

“(3) From any final judgment of the Circuit Court in which the sum claimed or the value of the thing demanded amounts to or exceeds one hundred dollars except in suits for the recovery of assessments for schools or school-houses, or for monthly contributions to schools, and in suits for the building and repairing of churches, parsonages, or churchyards.”

Sub-section (1) relates to the appeal given in certain named cases by Section 44. Sub-section (2) has nothing to do with the present dispute. The right to appeal, if it exists, must be found in Sub-section (3). The appellants contend that the power there conferred is adequate, as it includes any final judgment of the Circuit Court exceeding \$100. But it must be remembered that under this Code no judgment of the District Court could be given in any matter exceeding \$100 excepting the matters specified in Sub-section (2) of Section 54, and they are expressly excluded. Any final judgment of the Circuit Court referred to in Section 52 is, in their Lordships' opinion, a judgment contemplated by the Code of Civil Procedure itself, for their attention has not been directed to any statute under which further and more extended jurisdiction was conferred upon the Court at the time of the passing of the Code. The consequence is that the right to recover the taxes has been conferred upon the Municipality with regard to a Court from whose

judgment no right of appeal exists, and it cannot, in their opinion be introduced by giving the words in Sub-section (3) of Section 52, a meaning which would only be apt if they were considered in relation to an extended jurisdiction not provided for by the Code in which the section finds its place.

There is a further point also raised by the respondents to which, in their Lordships' opinion, no sufficient answer has been found. By the Statutes of Quebec, 10 George V., c. 79, the whole of the sections of the Code of Civil Procedure in which the provisions relating to the Circuit Court and the rights of appeal find place are declared to be replaced by other provisions, and so far as the Circuit Court is concerned the provisions as to appeal drop out. Section 42, however, provides that the Court of King's Bench shall have jurisdiction in all matters from all Courts wherefrom an appeal by law lies, and Section 64 provides :—

“ Unless otherwise provided by this Act, all cases, matters or things which, at the time of its coming into force, were within the competence of the Court of Review, shall be within the competence of the Court of King's Bench, sitting in appeal.”

Now this appeal had not been brought when the Statute was passed, although the proceedings before the Circuit Court had been instituted. Consequently the statutes giving whatever right of appeal may have existed were replaced by sections which gave none, and Section 64 of the Act, which provided that matters within the competence of the Court of Review should be subject to the Court of King's Bench, must be regarded as qualified by the provision that the powers of the Court of Review with regard to the Circuit Court had been taken away, and consequently to that extent the statute “ had otherwise provided.”

For these reasons their Lordships think that the appeal fails and must be dismissed with costs. The petition to quash the appeal as incompetent lodged by the respondents, which was before the Board on the 27th July, 1921, and was ordered to stand over until the hearing of the appeal, will be formally dismissed, and the appellants will be entitled to set off their costs in relation to it against the costs which they are now ordered to pay. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.



THE CANADA CEMENT COMPANY, LIMITED,

vs.

LA VILLE DE MONTRÉAL EST.



DELIVERED BY LORD BUCKMASTER.

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