

EPIPHANE LACHANCE (DEFENDANT) . APPELLANT ;

1915

AND

*Nov. 26.

EMILE CAUCHON (PLAINTIFF) RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.*Appeal—Jurisdiction—Injunction—Matter in controversy—Refusal of
costs—Supreme Court Rule 4—"Supreme Court Act," s. 46.*

In an action for an injunction restraining the defendant from carrying on dangerous operations in a quarry, and for \$100 damages, *Held*, that the Supreme Court of Canada had no jurisdiction to entertain an appeal. *Price Bros. v. Tanguay* (42 Can. S.C.R. 133), and *City of Hamilton v. Hamilton Distillery Co.* (38 Can. S.C.R. 239), referred to. *Shawinigan Hydro-Electric Co. v. Shawinigan Water and Power Co.* (43 Can. S.C.R. 650), distinguished.

The appeal was quashed but without costs as the respondent had neglected to move for an order to quash the appeal within the time limited by Supreme Court Rule No. 4.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of McCorkill J., in the Superior Court, District of Quebec, whereby the plaintiff's action was maintained with costs.

The circumstances of the case are stated in the judgment now reported.

When the case come on for hearing on the appeal to the Supreme Court of Canada, counsel for the re-

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

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spondent drew attention to the fact that there was no question of title to real estate involved on the appeal and the amount of damages claimed by the action was insufficient to give the court jurisdiction under section 46 of the "Supreme Court Act." Counsel for the appellant contended that the effect of the order declaring the injunction absolute was to restrict his rights in the use of the quarry upon his land, and, incidentally, might subject him to a fine of \$2,000 as provided by article 971 of the Code of Civil Procedure.

Marchand for the appellant.

Gelly for the respondent.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—This is an appeal from the Court of King's Bench affirming a judgment of Mr. Justice McCorkill which declared perpetual an interlocutory injunction and condemned the appellant to pay \$50 for damages and the costs of the suit. The proceedings began by way of a petition for an injunction alleging that the defendant was the proprietor of a quarry situated in the Village of Château Richer, and the plaintiff had his home upon a lot of land a short distance from the quarry. The petition alleged that the quarry was owned by defendant Lachance and operated by defendant Baker, that the work was dangerous to the life and property of the plaintiff through blasting, etc., setting out various occasions upon which rocks had been thrown upon his property and had endangered the life of members of his family and of the public. The petitioner claimed damages of \$100 and asked for an interlocutory injunction enjoining

defendants and their officers and agents from carrying on their dangerous operations.

The order made by Mr. Justice McCorkill sets out the facts shewing that the interlocutory order had been made, that a writ had been issued and served with a certified copy of the judgment granting the interlocutory injunction. He says that the plaintiff moved for a rule *nisi* ordering the defendants to shew cause why they should not be held in contempt for having violated the injunction, that this motion was granted, that the defendants pleaded separately to the said interlocutory order on the merits. He held that the defendants had failed to prove the material allegations of their defence and that the plaintiff had proved the material allegations of his petition. He maintained the plaintiff's action, made absolute and permanent the interlocutory injunction, and ordered the defendants to pay the plaintiffs \$50 damages. The Court of King's Bench confirmed this judgment and the defendant Lachance now appeals to the Supreme Court.

This appeal coming from the Province of Quebec is, of course, governed by the provisions of section 46, which say that no appeal shall lie—

(a) Unless it involves the validity of an Act of the Parliament of Canada. . . .

(b) Relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty, or to any title to lands or tenements, annual rents and other matters or things where rights in future might be bound.

(c) Amounts to the sum or value of two thousand dollars.

This case clearly does not fall within any of the above sub-sections.

In a number of cases an appeal has been attempted to be brought to this court where the remedy asked

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has been an injunction, but in all of them there was some foundation for the contention that titles to land were involved.

In *Price Bros. v. Tanguay* (1) the plaintiffs complained that they were impeded in the right to drive logs down the course of a river and asked for the removal of a boom placed across the river by the defendants. This court held that there was no jurisdiction.

In *City of Hamilton v. Hamilton Distillery Co.* (2) the plaintiffs asked for a declaration that certain municipal by-laws were illegal and for an injunction restraining the defendants from levying or collecting certain water-rates. In this case also the court held that they had no jurisdiction.

The case of *Shawinigan Hydro-Electric Co. v. Shawinigan Water and Power Co.* (3) does not assist the appellant because there the action was to set aside a by-law and an injunction prohibiting the carrying into effect a contract of sale made pursuant to the by-law and involving property worth \$40,000. The majority of the court held that the matter in dispute was the \$40,000 provided for in the contract.

In the present case there appears to be nothing upon which the appellant can rely to support the jurisdiction of the court.

Appeal quashed without costs.

Solicitors for the appellant: *Casgrain, Rivard, Chauveau & Marchand.*

Solicitors for the respondent: *Gelly & Dion.*

(1) 42 Can. S.C.R. 133.

(2) 38 Can. S.C.R. 239.

(3) 43 Can. S.C.R. 650.