

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Boston and others v. Lelièvre and others, from Canada; delivered 25th January, 1870.*

Present :

LORD WESTBURY.  
SIR JAMES W. COLVILLE.  
SIR JOSEPH NAPIER.

THEIR Lordships are not insensible to the importance of this case. At the same time they feel that they would not act rightly if they were to overrule the unanimous judgment of the Court below, upon a question of this nature, unless they were perfectly satisfied that the Judges had committed an error in refusing the exercise of their Appellate jurisdiction.

The question is governed entirely by the language of the statutes. The Court of Appeal in Canada is the creation of statute, and the subjects upon which Appeal lies to that Court are defined with reasonable clearness. The jurisdiction of the Court existed before the Consolidated Statutes, but the Consolidated Statutes annulled all the antecedent statutes upon the subject. The Consolidated Statutes may be treated as one great Act, and their Lordships think it would not be wrong to take the several chapters as being enactments which are to be construed collectively, and with reference to one another, just as if they had been sections of one statute, instead of being separate acts.

The material sections to which their Lordships' attention has been directed by the able arguments they have heard, are the 23rd sections of chapter 77, and chapters 88 and 89. The 23rd section gives generally a right of appeal to the Court of Queen's Bench from any judgment pronounced by a Superior Court, in all cases where the matter in dispute exceeds the sum of £20 sterling.

The Solicitor-General admitted that if this section stood alone, the matter in dispute here might fairly be taken as involving the determination of a matter of property exceeding £20; but he directed our attention to the two subsequent chapters, which are most important, namely the 88th and 89th chapters.

The 88th chapter, in section 17, gives an appeal from all final judgments rendered by the Superior Court after the 30th of June, 1858, in all cases provided for by that chapter and chapter 89, except cases of *certiorari*.

The cases provided for by chapter 89 are cases of writs of prohibition, of writs of *certiorari*, and of writs of *scire facias*.

The fact, therefore, which has to be inquired into is:—Did this writ of *certiorari* fall under the provisions of chapter 89; for if it did, the exception applies.

But, there can be no question that the chapter 89 gives the rule under which writs of *certiorari* shall for the future issue, be treated, and decided. It is the code of procedure with reference to that particular writ. It simplifies the proceedings under it, and makes them correspondent with proceedings in ordinary cases.

Therefore, the writ of *certiorari* here was provided for by that particular enactment.

The chapter 89 repeats, "Appeals from final judgments rendered under this Act, except in cases of *certiorari*, are provided for by chapter 88." It expressly refers, therefore, to the antecedent chapter for the purpose of making the directions given in that chapter applicable, by the express words of the reference, to all cases provided for by the statute.

Their Lordships, therefore, are of opinion that the *certiorari* in this case must be considered as governed by chapter 89; and if so, then to have been excepted from appeal.

This is the ground upon which it appears to their Lordships that the judgment of the Court below can and ought to be supported.

Their Lordships would hesitate very much to interfere with the unanimous judgment of the Court below upon a matter of this kind, which is to be regarded as a matter of procedure only, unless they

were clearly satisfied that the Court had made a great mistake in the construction put upon these statutes. They think that construction is more in conformity with general principles of law upon the subject of these writs, and they think also that it is a construction which they are compelled to affirm by the interpretation they are obliged to put upon the meaning, intent, and object of chapter 89; and holding, as their Lordships are obliged to do, that this case fell under the regulations of that statute, they will humbly advise Her Majesty to affirm the order of the Court below and to dismiss the Appeal.

*Sir Roundell Palmer* :—Your Lordships will remember the very peculiar position in which this case comes before you. It is only a part of an Appeal heard in the first instance by special order.

*Lord Westbury* :—We do not prejudice anything else that remains to be done, but we consider this as if it were a special case raising a particular question which it is convenient to dispose of *per se*. In that manner the Appeal has been presented to us and in that way we shall report to Her Majesty.

*Sir Roundell Palmer* :—Your Lordships will deal only with the Appeal from that particular order which quashed the writ and the order affirming the Appeal from it.

*Lord Westbury* :—Their Lordships will be disposed to deal with this Appeal as if it were a special case raising an Appeal to us on this simple question. Does an Appeal lie in a case of a writ of *certiorari* to the Court of Queen's Bench from the order made by the Superior Court?

*Sir Roundell Palmer* :—So I understand, your Lordship. Our Appeal is from several orders, the last of which is the only one your Lordships have been dealing with. Therefore your Lordships' judgment only will deal with the last order.

*Lord Westbury* :—Yes; it will not affect the other Appeals.

*Sir J. W. Colvile* :—It is without prejudice to the rest of the Appeals.

*The Registrar* :—Your Lordships directed the sum of £300 to be deposited to meet the expenses of the Appeal. If the costs of this Appeal are now given, they will be paid out of that £300, and the sum will then be exhausted.

*Lord Westbury* :—We will state that the recom-

mendation we shall finally give to Her Majesty will be,—that, without prejudice to the other questions involved in the Appeals which the Appellants were permitted to present, and which remain for decision, as to this particular question involved in the present Appeal, we shall humbly advise Her Majesty to affirm the order of the Court below *quoad hoc*, and to direct the expenses to be paid by the Appellant, the deposit made by the Appellant remaining entire to answer the expenses of the rest of the Appeal.