

In the Privy Council.

No. 74 of 1907.

On Appeal from the Supreme Court of Canada.

BETWEEN—THE CROWN GRAIN COMPANY LIMITED

(Defendants) *Appellants*

AND

HENRY L. DAY

(Plaintiff) *Respondent.*

CASE OF THE RESPONDENT.

1. This is an Appeal by Special leave against the judgment of the Supreme Court of Canada dated the 24th June, 1907, whereby the judgment of the Court of King's Bench of the Province of Manitoba sitting *in banc* dated the 10th May 1906 was set aside and the Appeal therefrom of the Plaintiff the present Respondent was allowed with costs.

2. In November 1903 the Appellants contracted with one Cleveland for the construction for them by the said Cleveland of a Grain elevator to be erected upon certain lands belonging to the Appellants in the Town of St. Boniface in the Province of Manitoba.

10 3. In December 1903 the Respondent who is the inventor and manufacturer of the Day Dust Collecting System entered into a sub-contract with the said Cleveland for the erection by him the Respondent in the said Grain Elevator of certain machinery known as a dust collecting system for the price of \$3020.00.

4. In August, 1904, the Respondent commenced the action herein against the Appellants, and the said Cleveland claiming as against the said Cleveland the sum of \$2020.00 being the balance then due to the Respondent under the said sub-contract and as against the Appellants a declaration that the Respondent was entitled to a lien on certain property in the said Town of St. Boniface,  
20 Manitoba, owned by the Appellants for the said sum of \$2020.00 under the provisions of the Mechanics and Wage Earners Lien Act—Revised Statutes of Manitoba, 1902, cap. 110, sect. 20.



5. The said action was tried before Mr. Justice Richards in the Court of King's Bench of Manitoba, and on the 11th September, 1905, the said Mr. Justice Richards gave judgment in favour of the Respondent against the said Cleveland for the sum of \$2140.60, and as against the Appellants did furthermore declare that the Respondent was entitled to a lien and charge under the Statute aforesaid upon the said lands in the Town St. Boniface aforesaid.

6. The Appellants appealed from the said Judgment to the Court of King's Bench for the Province of Manitoba, and on the 10th May, 1906, judgment was given by the said Court, consisting of the Honourable Lord Chief Justice Dubuc, the Honourable Mr. Justice Perdue and the Honourable Justice Mathers, whereby the Appellants Appeal was allowed, and it was directed that judgment be entered dismissing the said Action as against the Appellants with costs. 10

7. The Respondent, on the 25th May, 1906, gave notice of Appeal from the last named judgment to the Supreme Court of Canada, and upon the 7th June, 1906, an Order was made by the Honourable Mr. Justice Richards upon the application of the Respondent approving of the security for the purpose of his said Appeal, and granting leave to Appeal to the said Supreme Court.

8. The said Appeal came on for hearing before the said Supreme Court on the 22nd May, 1907, and the Appellants the then Respondents to the said Appeal then raised an objection to the jurisdiction of the said Court on the ground that under Section 36 of the said Mechanics and Wage Earners Lien Act, no Appeal lay from the said Judgment of the said Court of King's Bench in Banc. 20

The Respondent will submit, should it be necessary to do so on the question of costs herein, that such objection should have and could have been made at an earlier date in the said proceedings and thereby considerable costs and expenses would have been saved, and the Respondent will refer *inter alia* to Camerons Supreme Court Rules pp. 222-229.

9. The said objection was overruled and the question to be argued upon the present Appeal is whether that objection was well founded. 30

10. The British North America Act, 1867, provides as follows ;—

“ The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance, and organisation of a general Court of Appeal for Canada, and for the establishment of any additional Courts for the better administration of the Laws of Canada.”

11. Shortly after Federation the Canadian Parliament erected and constituted the Supreme Court and provided as follows :—

“ The Supreme Court shall have, hold and exercise an Appellate civil and criminal jurisdiction within and throughout Canada.” (R.S.C. 1906, c. 139, s. 35.) 40



“ Except as hereinafter otherwise provided an appeal shall lie to the  
 “ Supreme Court from any final judgment of the highest Court of final  
 “ resort, now or hereafter established in any Province of Canada.” (s. 56)

It is admitted by the Appellants, that if the Dominion Parliament had jurisdiction to enact these sections, the Supreme Court of Canada had jurisdiction in the present Case.

12. The original Manitoba Mechanics Lien Act 36 Vict. cap. 31 was passed in March 1873 creating the right to a lien as aforesaid, and such right was then subject to absolutely no limitation in appeal. Between 1873 and 10 1898 various Statutes were passed by the Manitoba Legislature dealing with such right of lien, which said right existed for 25 years without any attempt being made to limit the right of appeal in connection therewith.

It is contended, however, that the Province of Manitoba had authority to limit the jurisdiction of the Supreme Court and consequently the right of appeal as aforesaid, and that it has done so by an enactment, which it is alleged covers and which is referred to herein, before the present Case. The enactment is as follows :—

20 “ In all actions where the total amount of the claims of the Plaintiff  
 “ and other persons claiming liens is more than \$100.00, any party  
 “ affected thereby may appeal therefrom to the Court of King’s Bench  
 “ *in banc* whose judgment shall be final and binding, and no appeal shall  
 “ lie therefrom. (R.S.M. c. 110, s. 36.)

And the only question now for decision is the validity of such legislation.

13. The Respondent submits that the decision of the Court appealed from is right for the following (amongst other).

## REASONS.

1. Because the Parliament of the Dominion of Canada had power to bestow jurisdiction upon the Supreme Court.
2. Because the decision of the Supreme Court is in accordance with the uniform jurisprudence and practice of that Court since 30 1875 when the Court was established, and, if the Judicial Committee were to hold against the jurisdiction of the Supreme Court in this Case, the result would be to deny the jurisdiction of the Court in a large majority of the Appeals which the Court has determined during the last 33 years.
3. Because the legislature of Manitoba has no authority under section 92 of the British North America Act, 1867, or



otherwise, to confer or prohibit any Appeal to the Supreme Court of Canada.

4. Because upon the true construction of sections 91, 92, and 101 of the British North America Act, 1867, the legislative power to confer and regulate a right of appeal to the Supreme Court of Canada in cases such as the present rests with the Parliament of Canada, and not with the legislature of Manitoba.
5. Because the Dominion legislation authorising the appeal should be upheld under Section 91 of the British North America Act, 1897, as an enactment competent to the Parliament of Canada in relation to a matter not coming within the classes of subjects by the said Act assigned exclusively to the legislatures of the Provinces. 10
6. Because by the scheme of the British North America Act a certain superintendence over Provincial action is assigned to the Dominion. The principal provision in that respect is the Dominion power of disallowance of Provincial legislation. The other is the Dominion establishment of a "General Court of Appeal;" without which the first would be ineffective. 20
7. Because one principal object of a "General Court of Appeal" is the securing of uniformity of decision, so far as practicable, within the Dominion of Canada. This is one of the points in respect of which the Canadian constitution is superior to that of the United States based upon rigid ideas of state sovereignty.

JOHN S. EWART.

R. O. B. LANE, JUNR.



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—v.—

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Respondent's Case.

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*Respondent's Solicitors.*