

UNIVERSITY OF LONDON  
W.C. 1

30 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

29916

In the Privy Council.

No. 74 of 1907.

## ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN THE CROWN GRAIN COMPANY,  
LIMITED ... (Defendant) *Appellants.*

AND

HENRY L. DAY... (Plaintiff) *Respondent.*

AND THE

ATTORNEY-GENERAL FOR CANADA *Intervenant.*

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## Case

Of the ATTORNEY-GENERAL FOR CANADA.

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1. This is an appeal by special leave from the ruling and order of the Supreme Court of Canada pronounced on the 22nd day of May, 1907 (A) dismissing the motion of the Appellants to quash the appeal to the Supreme Court on the ground that by virtue of section 36 of the Mechanics and Wage Earners' Lien Act (Revised Statutes of Manitoba, 1902, Chapter 110) the appeal was incompetent, and (B) ordering the argument to proceed upon the merits of the appeal. Record, p. 15.  
11, 16-26.



Record, pp. 1-3.

2. The action was brought in the Court of King's Bench of Manitoba by the Respondent against the Appellants, and one W. S. Cleveland, alleging by the Statement of Claim that the Plaintiff had in respect of materials furnished and work done become entitled to a lien under the said Act upon certain lands and buildings thereon the property of the Appellants; that subsequently the Respondent, pursuant to the said Act, caused to be filed and registered in the Winnipeg Lands Titles Office a statement of his claim or lien in the form provided and duly verified as required by the said Act, and the Respondent claimed payment of the sum of \$2020.00, the balance alleged to be due, together with interest.

Record, pp. 3-4.

3. The Appellants delivered a Statement of Defence and the action was tried before Mr. Justice Richards, who, on 18th January, 1906, gave judgment for the Respondent for the sum of \$2140.60 to be paid by the Appellants.

Record, pp. 4-6.

Record, pp. 6-7.

4. From this judgment the Appellants appealed to the Court of King's Bench In Banc, and the appeal was heard before the said Court, consisting of the Chief Justice and Perdue and Mathers, JJ., which Court on 4th December, 1906, pronounced judgment allowing the appeal and dismissing the action as against the Appellant Company.

Record, pp. 8-9.

5. The Respondent appealed from the said judgment of the Court of King's Bench In Banc to the Supreme Court of Canada.

Record, pp. 9-10.

6. The Appellants previous to the hearing of the said appeal gave notice to the Respondent (then Appellant) that upon the hearing of the appeal the Appellants would raise the preliminary objection that by section 36 of the said Mechanics and Wage Earners' Lien Act there was no appeal from the judgment of the Court of the King's Bench In Banc.

Record, p. 14, 1-10,  
39 Supreme Court  
Reports, p. 259.

7. The motion to quash the appeal to the Supreme Court of Canada came on for hearing on the 22nd May, 1907, before the



Court composed of Fitzpatrick, C.J., and Davies, Idington, McLennan and Duff, JJ., and the Court dismissed the motion and ordered the argument to proceed upon the merits of the appeal.

8. Leave to appeal was only granted against this Ruling and Order of the Supreme Court, but in the Record the Judgment on the merits of the appeal, dated 24th June, 1907, together with the Reasons for Judgment, is alone printed. In this Judgment on the merits even if open on this appeal the Attorney-General for Canada is not interested.

Record, p. 14, 1, 33.  
Record, p. 10, 1, 12.  
Record, p. 11, 1, 1.

9. A lien is given under the circumstances of the present case by the Mechanics and Wage Earners' Lien Act which provides also for the registration of the lien and for proceedings by way of action to enforce it such as have been taken.

10. By section 36 of the said Act it is provided that "In all actions where the total amount of the claims of the Plaintiff and other persons claiming liens is more than one hundred dollars, 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."

11. By the Supreme Court Act, R.S.C. 1906, Chapter 139, section 36, subject to exceptions of which this case is not one, "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, whether such court is a court of appeal or of original jurisdiction, in cases in which the court of original jurisdiction is a superior court."

12. The Attorney-General for Canada submits that the Supreme Court of Canada was right in holding that it had jurisdiction to hear and determine the appeal upon the merits for the following and other



## REASONS.

Because :—

1. The jurisdiction is conferred in terms by the Act of the Parliament of Canada constituting the Supreme Court, and it is enacted by section 101 of the British North America Act, 1867, that—"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."
2. The said decision of the Supreme Court is in accordance with the uniform jurisprudence and practice of that Court since 1875 when the Court was established.
3. 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. 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 Dominion Parliament and not with the Legislature of Manitoba.
5. The Dominion legislation authorising the appeal is, under section 91 of the British North America Act, 1867, 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.

E. L. NEWCOMBE.



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Fos. 17.

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CASE  
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CANADA.

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