

domain, notwithstanding their public character and the nature of their trust.

*Per Brodeur and Lavergne, JJ.*:—This right, not having been exercised for a period of over thirty years, was extinguished by prescription under art. 2242 C.C. *Anglin, J., contra.*

*Per Davies and Idington, JJ., dissenting*:—The appeal should be dismissed as the appellants have no reason to complain of the amount of compensation allowed.

Appeal allowed with costs.

*Lafleur, K.C., and St. Laurent, K.C., for appellants; Gibsone, K.C., for respondent, The King; Dobell, for respondents, Quebec Harbour Commissioners.*

B.C.]

[May 14, 1918.

KOMNICK BRICK MACHINERY CO. v. B.C. PRESSED BRICK CO.

*Statute—Construction—Legislation declared ultra vires—Amendment granting right to "maintain anew" an action—Jurisdiction—Supreme Court Act, s. 2, par. (e).*

An action brought by the appellant was dismissed by the trial court upon the merits and by the Court of British Columbia on the ground that the appellant, being an unlicensed extra-provincial company, had been prohibited by the Companies Act of 1897 from making the contract sued upon. Later on, this legislation was held by the Judicial Committee of the Privy Council to be *ultra vires* of the legislature. The Companies Act was subsequently amended by enacting the following provision:

"Where an action, suit, or other proceeding has been dismissed or otherwise decided against an extra-provincial company on the ground that any act or transaction of such company not having been licensed or registered pursuant to this or some former Act, the company may, if it is licensed or registered as required by this Act and upon such terms as to costs as the Court may order, maintain anew such action, suit, or other proceeding as if no judgment had therein been rendered or entered."

*Held*, that the appellant was not obliged to bring an action *de novo*, but had the right to ask for a re-instatement or re-hearing of the dismissed action at the stage at which it was when the judgment based upon the statute subsequently held *ultra vires* was pronounced.

The judgment appealed from holding that the action must be begun *de novo* is a final judgment within the meaning of paragraph (e) of s. 2 of the Supreme Court Act.

Appeal allowed with costs.

*H. J. Scott, K.C., for appellant; Chrysler, K.C., for respondent.*