THE DOMINION SALVAGE AND WRECKING COMPANY (LIMITED) (PLAINTIFF)..... APPELLANT; 1892 *Mar. 9.

AND

ORMISTON BROWN *et al., ès-qualité* (DEFENDANTS)..... RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Action for call of $1,000—*Future rights—Supreme and Exchequer Courts Act sec.* 29 *subsec.* (*b.*)

The company sued the defendant B. for $1,000, being a call of ten per cent on 100 shares of $100 each alleged to have been subscribed by B. in the capital stock of the company, and prayed that the defendant be condemned to pay the said sum of $1,000 with costs. The defendant denied any liability and prayed for the dismissal of the action.

During the pendency of the suit, the company's business was ordered to be wound up under the Winding-up Act, 45 Vic. ch. 23 (D.), and the liquidator was authorized to continue the suit. The Superior Court condemned the defendant to pay the amount claimed, but on appeal to the Court of Queen's Bench (appeal side) the action of the plaintiff company was dismissed. On appeal to the Supreme Court of Canada:

Held, Gwynne J. dissenting, that the appeal would not lie, the amount in controversy being under $2,000 and there being no future rights as specified in subsec. (*b.*) of sec. 29 c. 135 R. S. C., which might be bound by the judgment. *Gilbert* v. *Gilman* (16 Can. S.C.R. 189), followed.

APPEAL from a judgment of the Court of Queen's Bench (appeal side) reversing a judgment of the Superior Court and dismissing the plaintiff's action.

The suit was brought by the company plaintiff against defendant Alfred Brown to recover the sum of

*PRESENT:—Sir W. J. Ritchie C. J., and Strong, Taschereau, Gwynne and Patterson JJ.

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one thousand dollars being a call of ten per cent on one hundred shares of one hundred dollars each which plaintiff alleged Brown subscribed in the capital stock of the company.

The declaration set out the undertaking which Brown signed and that one hundred shares were allotted to Alfred Brown, and that a call of ten per cent was made on the second of November, 1881, of which he was notified but which he failed and neglected to pay, and prayed for a condemnation to the extent of one thousand dollars against said defendant.

Defendant pleaded, denying any liability as a shareholder in the company plaintiff, &c.

During the pendency of the suit Alfred Brown died and the *instance* was taken up by the present respondents.

The judgment of the Superior Court condemned the respondents to pay the amount claimed by the suit, but this judgment was reversed by the Court of Queen's Bench and the action dismissed.

Goldstein for appellant—

By his pleas the respondent has denied his liability for any part of his subscription of $10,000 to the capital stock of the company, and therefore the amount in controversy between the parties is over $2,000; in any case the decision in this case would in effect be *res judicata* between the parties as to any future call, and therefore the case was appealable under sec. 29 (*b.*) of the Supreme and Exchequer Courts Act.

S. H. Blake Q.C. for respondent was not called upon, and the court proceeded to deliver judgment.

Sir W. J. RITCHIE C.J.—In this case I am obliged to follow the judgment I delivered in the case of *Gilbert* v. *Gilman* (1), where the same argument was urged be-

(1) 16 Can. S. C. R. 189.

fore us in support of the jurisdiction. In this case the only amount claimed is $1,000, a sum not sufficient to give this court jurisdiction. If hereafter a case should arise on other calls on this subscription, in which the amount in controversy is two thousand dollars, and the judgment is against the appellant, then as this court would have jurisdiction, he could come before this court, and we should not be bound by the decision of an inferior tribunal.

As in this case it does not appear that the objection to the jurisdiction was taken in the respondent's factum, or by motion, the appeal will be quashed but without costs.

STRONG J.—I agree that the appeal should be quashed. This case comes under the provision of the statute which requires that the amount in controversy on an appeal to this court should be $2,000. Here the amount in controversy is only $1,000 and this is ascertained by the conclusion of the declaration. The plaintiff does not claim and could not get judgment for more than $1,000, and all the defendant is defending himself against is this claim of $1,000. Then does this case involve the question of future rights, so as to give appellant a right of appeal? For the reasons stated in *Gilbert* v. *Gilman* (1) I am of opinion that it does not. The exceptions in the statute are of certain specified future rights mentioned in sub-sec. (*b.*) of sec. 29 of the Supreme and Exchequer Courts Act, and do not include such claims as are contended to be future rights in this case, as future liability for calls on shares. The appeal should be quashed without costs.

TASCHEREAU J.—I agree.

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GWYNNE J.—With great deference, this case is appealable. The amount in controversy although but one call of the $10,000 alleged to have been subscribed, is in my opinion nothing less than the whole amount of stock in respect of which the call sued for is made. The defence is, and the judgment has held, that no subscription for stock ever was made which imposed any liability whatever upon the person who subscribed his name for the stock, whom the defendant represents. That judgment in my opinion can be relied upon as *res judicata* to the effect that no liability in respect of the $10,000 ever accrued and would be a complete answer to any action for any future call. The case is in my opinion quite distinguishable from every case in which this court has held that no appeal lay.

PATTERSON J.—I do not dissent from the majority of the court. When there is a debt asserted for say $10,000 payable by instalments of $1,000 each—*debitum in presenti, solvendum in futuro*—and an action to recover one instalment is defended on grounds that involve the liability for the whole debt, the amount in controversy in the action, and on an appeal would be, in my opinion, the $10,000 and not merely the $1,000 instalment. The judgment in the action would be conclusive of the liability in any action for other instalments. On the same principle I should hold that in an action by a joint stock company for calls amounting to less than $2,000 upon stock subscribed exceeding that amount the full amount of the subscription, and not merely that of the particular calls, would be in controversy upon a defence going to the whole liability, such for example, as that the subscription had been procured by fraud. But the present claim is by the liquidator of a company which is being wound up, and it does not appear that as between him and the

defendant there is any claim beyond the amount sought to be recovered in this action notwithstanding that the defendant might have been liable to the company, if it had maintained itself as a going concern, for the amount of $10,000 for which his name appears in the stock book. I am, therefore, not prepared to say that the matter in controversy in this appeal amounts to the sum or value of $2,000.

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Patterson J.

Appeal quashed without costs.

Solicitors for appellants: *Carter & Goldstein.*

Solicitors for respondent: *Lacoste, Bisaillon, Brosseau & Lajoie.*