

1903
 *Dec. 2.
 *Dec. 9.

THE CITY OF MONTREAL (PLAIN-
 TIFFS)..... } APPELLANT;

AND

THE LAND AND LOAN COMPANY }
 (DEFENDANTS)..... } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH APPEAL
 SIDE, PROVINCE OF QUEBEC.

*Appeal—Amount in dispute—Local improvements—Assessment—Title to
 land—Future rights.*

In proceedings by the City of Montreal to collect the amount assessed on defendants' land together with other lands assessed for local improvements, the defendants filed an opposition to the seizure of their land, alleging that the claim was prescribed. The opposition was maintained and the city appealed to the Supreme Court of Canada.

Held, that there was nothing in controversy between the parties but the amount assessed on defendant's land and, that amount being less than \$2,000, the Court had no jurisdiction to entertain the appeal.

APPEAL from a decision of the Court of King's Bench appeal side, affirming the judgment of the Superior Court (1) in favour of the defendants.

The company, together with other land owners, were taxed under a special assessment for municipal purposes in Montreal in the sum of \$316.88 and the sheriff was directed to levy for the amount of the

* PRESENT.—Sir Elzéar Taschereau, C.J. and Girouard, Davies, Nesbitt and Killam JJ.

(1) Q. R. 23 S. C. 461.

assessment by the seizure and sale of certain of their lands. The total amount to be levied upon all the property affected by the special assessment roll for this tax exceeded \$50,000 and the value of the defendants' land seized, under the proceedings taken, exceeded \$2,000.

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An opposition to the seizure was filed by the company alleging that the city's claim was prescribed. This opposition was maintained by the Superior Court (Doherty J.) and his judgment was affirmed by the Court of King's Bench. The city then appealed to the Supreme Court of Canada.

Elliott, for the respondents, moved to quash the appeal, contending that the sum of \$316.88 only was in dispute and citing *Gilbert v. Gilman* (1); *Dominion Salvage Co. v. Brown* (2); *Rodier v. Lapierre* (3); *Raphael v. Maclaren* (4), and *Macdonald v. Galivan* (5).

Atwater K. C. contra. The validity of the whole assessment is involved in this appeal and future rights are bound by the judgment of the Court of King's Bench. See *Ecclésiastiques de St. Sulpice v. City of Montreal* (6); *Turcotte v. Dansereau* (7).

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—Motion to quash upon the ground that, under sec. 29 of the Supreme Court Act, the case is not appealable.

The proceedings in question originated under the enactments of sec. 396 *et seq.* of the charter of the City of Montreal, by a demand from the city, appellant, calling upon the sheriff to seize in execution and sell certain of the respondents' lands upon which the city

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

(4) 27 Can. S. C. R. 319.

(2) 20 Can. S. C. R. 203.

(5) 28 Can. S. C. R. 258.

(3) 21 Can. S. C. R. 69.

(6) 16 Can. S. C. R. 399.

(7) 26 Can. S. C. R. 578.

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claimed the sum of \$316.88 for a special assessment thereon.

The total amount of the assessment roll upon all the properties affected thereby exceeds \$50,000. The property seized by the sheriff at the appellants' said demand exceeds \$2,000 in value.

The respondents filed an opposition to the said seizure by which they alleged that the appellants' claim was prescribed, and could not be enforced, and asked that the sheriff's proceedings be therefore set aside.

Upon issue joined, the Superior Court maintained the respondents' opposition, and that judgment was affirmed by the Court of King's Bench. The City have brought the present appeal from the judgment of the Court of King's Bench.

We have no jurisdiction to entertain it. There has been and there is nothing more in controversy between the parties than a sum of \$316. The whole amount of the roll is not in controversy. The roll itself is not controverted and the judgment in this case cannot affect in any way the other parties to it. The appellants invoke the rights of third parties, or rather their own rights against third parties in support of their right to appeal, but those rights *inter alios* or *contra alios* cannot be looked at as a criterion of our jurisdiction. It is the amount in controversy between the parties to the record that governs in this case on the subject. *Flatt v. Ferland* (1) ; *Lachance v. La Société de Prêts, etc.* (2) ; *Gendron v. McDougall* (3) as explained in *Kinghorn v. Larue* (4). The value of the land seized in execution is not the amount in controversy, as the appellant would contend. *Bank of Toronto v. Les Curé etc. de la Nativité* (5) ; *Champoux v. Lapierre* (6) ; *Flatt v. Ferland* (1) ;

(1) 21 Can. S. C. R. 32.

(2) 26 Can. S. C. R. 200.

(3) Cas. Dig. 2 ed. 429.

(4) 22 Can. S. C. R. 347.

(5) 12 Can. S. C. R. 25.

(6) Cas. Dig. 2 ed. 426.

The County of Verchères v. The Village of Varennes (1). Nor does the controversy relate to any title to lands, annual rents and other matters or things where the rights in future, *ejusdem generis* of the parties to the controversy, might be bound. *O'Dell v. Gregory* (2); *Raphael v. Maclaren* (3); *Jermyn v. Tew* (4); *Canadian Mutual Loan and Investment Co. v. Lee* (5); *Waters v. Manigault* (6).

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It is settled law that neither the probative force of a judgment nor its collateral effects, nor any contingent loss that a party may suffer by reason of a judgment, are to be taken into consideration when our jurisdiction depends upon the pecuniary amount or upon any of the subjects mentioned in sec. 29 of the Act. *Toussignant v. Nicolet* (7).

Motion to quash granted with costs.

Appeal quashed with costs.

Solicitor for the appellants: *Coyle & Tétreau*.

Solicitor for the respondents: *Henry J. Elliott*.

(1) 19 Can. S. C. R. 365.

(2) 24 Can. S. C. R. 661.

(3) 27 Can. S. C. R. 319.

(4) 28 Can. S. C. R. 497.

(5) 34 Can. S. C. R. 224.

(6) 30 Can. S. C. R. 304.

(7) 32 Can. S. C. R. 353.