ALEXANDER McKAY (PLAINTIFF).....APPELLANT; 1894

AND *Oct. 5, 6.

THE CORPORATION OF THE TOWNSHIP OF HINCHINBROOKE (DEFENDANT) ..... } RESPONDENT.

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

Appeal—Supreme and Exchequer Courts Act, R.S.C. ch. 135, *secs.* 24 *and* 29—*Costs.*

Held, that a judgment in an action by a ratepayer contesting the validity of an homologated valuation roll is not a judgment appealable to the Supreme Court of Canada under section 24 *(g)* of the Supreme and Exchequer Courts Act, and does not relate to future rights within the meaning of subsection *(b)* of section 29, of the Supreme and Exchequer Courts Act.

Held, also, that as the valuation roll sought to be set aside in this case had been duly homologated and not appealed against within the delay provided in art. 1061 (M.C.) the only matter in dispute between the parties was a mere question of costs, and therefore the court would not entertain the appeal. *Moir* v. *Corporation of the Village of Huntingdon* (19 Can. S.C.R. 363) followed; *Webster* v. *Sherbrooke* (24 Can. S. C. R. 52) distinguished.

APPEAL from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court and dismissing the appellant's action.

This was an action brought by the appellant, a ratepayer of the municipality of the township of Hinchinbrooke, asking the Superior Court to have the valuation roll of the municipality for the year 1890, which had been homologated and not appealed against, as provided in article 1061 (M.C.), and which was in force for local and county purposes, set aside and

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

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declared null and void, because the valuators appointed by the lieutenant governor, who were paid a sum of $118 for their services, had been illegally appointed, and that a roll of valuation previously made should have been homologated by the municipal council. The Superior Court maintained the appellant's action and declared the valuation roll null and void. The Court of Queen's Bench, reversing the judgment of the Superior Court, dismissed the plaintiff's action and held that the court had no jurisdiction to grant the appellant's prayer, the delay for appealing having elapsed since the last roll came into force for local and county purposes. On appeal to the Supreme Court of Canada.

McLaren Q. C. and *Laurendeau* moved to quash the appeal on the ground that the matter in controversy was for less than $2,000, and the case did not come within secs. 24 or 29 of ch. 135 R.S.C., and that it was now a mere matter of costs.

Geoffrion Q.C. and *Brossoit* Q.C. for appellant contra.

THE CHIEF JUSTICE.—(Oral). I am of opinion that this court has no jurisdiction to entertain this appeal. It is not within the provisions of the Supreme and Exchequer Courts Act sec. 24 (*g*) R.S.C. ch. 135, which gives jurisdiction in the case of an application to quash a by-law, and that for two reasons. The present case is a proceeding not in the nature of a public action, as in the case of *Webster* v. *Sherbrooke* (1), decided yesterday by this court, but an action taken in the interest of a private ratepayer; and in the next place, it is not a proceeding to annul the by-law of the corporation. All that is sought is to set up the validity of a valuation roll which the municipal council itself has refused to homologate.

(1) 24 Can. S. C. R. 52.

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Then again, it does not refer to future rights. The cases coming under that head in subsec. (*b*) of sec. 29 of the Supreme and Exchequer Courts Act, are cases which relate to annual rents, or annuities, or periodical payments of an analogous character. In such cases a judgment in an action relating to arrears would be binding in future actions. There is nothing of that kind here.

I also agree with my learned brothers that the appeal should be dismissed for the reasons given in the case of *Moir* v. *Corporation of Huntingdon* (1). The question in the present action is now merely one of costs. The appeal should be quashed with costs.

TASCHEREAU J.—(Oral). I agree, but especially upon the ground taken by this court in *Fraser* v. *Tupper* (2) and *Moir* v. *Corporation of Huntingdon* (1). In addition to this case I may also add the following:—*Levien* v. *The Queen* (3); *Crédit Foncier of Mauritius* v. *Paturau* (4); *Cowen* v. *Evans* (5); *Attenborough* v. *Kemp* (6); *Richards* v. *Birley* (7).

The cases of *Inglis* v. *Mansfield* (8) and *Yeo* v. *Tatem* (9) have no application. Here the court might have refused to the appellant his prayer for costs even if it had granted him the setting aside of this valuation roll. Under colour of an appeal on the merits this is virtually but an appeal for costs. The judgment of this court, should the appellant succeed, would have no effect but on costs and be executory only as to costs.

In a late case of *Martley* v. *Carson* (10) the Privy Council, upon this principle, dismissed an appeal without

(1) 19 Can. S.C.R. 363.
(2) Cass. Dig. 2 ed. 421.
(3) L.R. 1 P.C. 536.
(4) 35 L.T.N.S. 859.
(5) 22 Can. S.C.R. 328.
(6) 14 Moo. P.C. 351.
(7) 2 Moo. P.C. (N.S.) 96.
(8) 3 Cl. & F. 371.
(9) L.R. 3 P.C. 696.
(10) 20 Can. S.C.R. 634.

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entering upon the merits, upon the ground that it was made to appear before them by affidavit that during the progress of the case in the British Columbia courts the appellant had sold the property in question in the case to his wife. This sale appeared to have been made immediately after the judgment of the Supreme Court of British Columbia but had not been brought to our notice when the case was before this court.

GWYNNE, SEDGEWICK and KING JJ. concurred.

Appeal quashed with costs.

Solicitors for appellant: *Brossoit & Mercier.*

Solicitors for respondents: *Seers & Laurendeau.*