

JOSEPH O. TOUSSIGNANT ET AL. } APPELLANTS ;
 (PLAINTIFFS)..... }
 AND
 THE COUNTY OF NICOLET (DE- } RESPONDENT.
 FENDANT)..... }

1902
 ~~~~~  
 \*May 13.  
 \*May 14.  
 ———

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

*Appeal—Jurisdiction — Annulment of Procès-verbal—Matter in contro-  
 versy.*

The Supreme Court of Canada has no jurisdiction to entertain an appeal in a suit to annul a *procès-verbal* establishing a public highway notwithstanding that the effect of the *procès-verbal* in question might be to involve an expenditure of over \$2,000 for which the appellants' lands would be liable for assessment by the municipal corporation.

*Dubois v. The Village of Ste. Rose* (21 Can. S. C. R. 65) ; *The City of Sherbrooke v. McManamy* (18 Can. S. C. R. 594) ; *The County of Verchères v. The Village of Varennes* (19 Can. S. C. R. 365) and *The Bell Telephone Company v. The City of Quebec* (20 Can. S. C. R. 230) followed.

*Webster v. The City of Sherbrooke* (24 Can. S. C. R. 52,268) and *McKay v. The Township of Hinchinbrooke* (24 Can. S. C. R. 55) referred to.

*Reburn v. The Parish of Ste. Anne* (15 Can. S. C. R. 92) overruled.

APPEAL from the judgment of the Court of King's Bench, reversing the judgment of the Superior Court, District of Three Rivers, and dismissing the plaintiffs' action with costs.

\* PRESENT :—Taschereau, Sedgewick, Girouard, Davies and Mills JJ.  
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The action was for the annulment of a *procès-verbal* establishing a public highway in the County of Nicolet, providing for the opening of the road and charging the lands of the appellants with the expenses of construction, amounting to \$2,000, and of maintenance of the road, estimated at about \$400 per year.

When the appeal came on for hearing on the merits, a motion was made on behalf of the respondent to quash the appeal on the ground that an appeal did not lie under the Acts relating to the Supreme Court of Canada where the question was a claim by a private party for setting aside a *procès-verbal* for the opening of a public road.

*Lafleur, K.C.*, for the motion.

*Atwater, K.C.*, contra.

The judgment of the court was delivered by:—

TASCHEREAU J.—Motion to quash. It must be allowed. The constant jurisprudence of this court is against our right to entertain the appeal. The fact that the *procès-verbal* attacked by the appellants' action may have the result to put upon them the cost of the work in question, alleged to be over \$2,000, does not make the controversy one of \$2,000. There is no pecuniary amount in controversy; in other words there is no controversy as to a pecuniary amount or of a pecuniary nature. 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 section 29 of the Supreme Court Act. *Fréchette v. Simmoneau* (1), and cases there cited. Compare *Ross v.*

*Prentiss* (1). And there is here no title to lands or other matters or things of that nature, *ejusdem generis*, where the rights in future might be bound that the controversy relates to as these words of that section of the Act have been authoritatively construed. *Dubois v. The Village of Ste. Rose* (2) is a direct authority upon that point. See the jurisprudence to the same effect in analogous cases in the United States Courts, vol. 2, Cyc. of Law & Prac. page 552.

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The fact that the lands of the appellants will be assessed for the cost of the work does not make the controversy one relating to the title to these lands nor to anything of that nature. That is the consequence of the judgment, but that is not the judgment. The consequence of any judgment for a sum over \$40 is that a defendant's lands may be seized in execution thereof, or mortgaged by proper registration of the judgment, but that does not make the controversy one relating to the title to these lands, though it may have the consequence to affect it. An hypothecary action affects the land hypothecated, but, under the jurisprudence, is not a controversy relating to the title to the land under the Act; no one contests, in such a case, that the title is in the defendant.

The case of *Reburn v. Parish of Ste. Anne* (3), relied upon by the appellants, is not a governing authority since the *Dubois Case*, (*ubi supra.*), (2); and the cases of *Les Ecclésiastiques de St. Sulpice v. City of Montreal* (4); *Stevenson v. City of Montreal* (5); *Murray v. Town of Westmount* (6), and *Delorme v. Cusson* (7), have no application. The amendment to section 29 made by 56 Vict., ch. 29 does not help the appellants. Upon this and the various reasons which they have invoked

(1) 3 How. 771.

(2) 21 Can. S. C. R. 65.

(3) 15 Can. S. C. R. 92.

(4) 16 Can. S. C. R. 399.

(5) 27 Can. S. C. R. 187.

(6) 27 Can. S. C. R. 579.

(7) 28 Can. S. C. R. 66.

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in support of their claim to this appeal, I refer to *O'Dell v. Gregory* (1); *Raphael v. Maclaren* (2); *Macdonald v. Galivan* (3); *Noel v. Chevrefils* (4); *Talbot v. Guilmartin* (5); *The County of Verchères v. The Village of Varennes* (6); *Flatt v. Ferland* (7); *Waters v. Manigault* (8), and *Cully v. Ferdais* (9).

The cases of *City of Sherbrooke v. McManamy* (10), and of *The Bell Telephone v. The City of Quebec* (11), with the *Dubois Case* (12), and *The County of Verchères v. The Village of Varennes*, (*ubi supra*), (6) are governing authorities against appellants' claim to this appeal based upon subsec. (g) of sec. 24 of the Act.

Then this is not a case of a by-law, but of a *procès-verbal*. And it is a private action, not a petition to annul under the Municipal Act. The distinction between these two proceedings was made in *Webster v. The City of Sherbrooke* (13), and *McKay v. The Township of Hinchinbrooke* (14).

*Appeal quashed with costs.*

Solicitors for the appellants: *Toussignant & Guillet*.

Solicitors for the respondent: *Martel & Comeau*.

(1) 24 Can. S. C. R. 661.

(2) 27 Can. S. C. R. 319.

(3) 28 Can. S. C. R. 258.

(4) 30 Can. S. C. R. 327.

(5) 30 Can. S. C. R. 482.

(6) 19 Can. S. C. R. 365.

(7) 21 Can. S. C. R. 32.

(8) 30 Can. S. C. R. 304.

(9) 30 Can. S. C. R. 330.

(10) 18 Can. S. C. R. 594.

(11) 20 Can. S. C. R. 230.

(12) 21 Can. S. C. R. 65.

(13) 24 Can. S. C. R. 52, 268.

(14) 24 Can. S. C. R. 55.