

1899 BENJAMIN ETHIER *et al.* (PE- } APPELLANTS;
 *May 25. TITIONERS) }

AND

SAMUEL H. EWING *et al.* AND } RESPONDENTS.
 THE CITY OF MONTREAL . . . }

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER
 CANADA SITTING IN REVIEW, AT MONTREAL.

*Appeal—Court of Review—Right of appeal to Privy Council—Construction
 of statute—Final judgment—R. S. C. c. 135, ss. 24 (j), 28 & 29—54
 & 55 V. c. 25 s. 3 (D).*

Certain ratepayers of the City of Montreal having objections to one
 of the commissioners named in proceedings taken for the expro-
 priation of land required for the improvement of a public street,
 in which they were interested, presented a petition to the
 Superior Court demanding his recusation. The petition was dis-
 missed; on an appeal to the Court of Review, the judgment dis-
 missing the petition was affirmed, and further appeal was then
 taken to the Supreme Court of Canada. On motion to quash
 the appeal for want of jurisdiction ;—

Held, that no appeal *de plano* would lie from the judgment of the
 Court of Review to Her Majesty's Privy Council, and conse-
 quently there was no appeal therefrom to the Supreme Court
 of Canada under the provisions of the Act, 54 & 55 Vict. ch. 25,
 sec. 3, amending *The Supreme and Exchequer Courts Act*.

Held, further, that the judgment of the Court of Review was not a
 final judgment within the meaning of section 29 of *The Supreme
 and Exchequer Courts Act*.

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

APPEAL from the judgment of the Superior Court for Lower Canada, sitting in review, at Montreal (1), affirming the judgment of the Superior Court, District of Montreal, which dismissed the petition of the appellants for the recusation of the respondent Ewing as a commissioner in expropriation proceedings taken for the improvement of a public street in the City of Montreal.

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During the course of proceedings for the expropriation of lands for the purpose of widening a street in the City of Montreal, the appellants, being ratepayers interested in the lands sought to be expropriated, took objection to the appointment of the respondent Ewing as one of the commissioners on the ground that he was related to an owner of some of the lands in question, and petitioned the Superior Court for his recusation and removal. The petition was dismissed with costs, and on appeal to the Court of Review the judgment was affirmed, whereupon a further appeal was taken to the Supreme Court of Canada.

MOTION by the respondents to quash the appeal for want of jurisdiction.

*Atwater Q.C.* and *Ethier Q.C.* for the motion. The judgment from which the appeal is sought is not a final judgment within the meaning of sec. 29 of *The Supreme and Exchequer Courts Act*, and sub-sec. j, of sec. 24 does not apply; *Demers v. Bank of Montreal* (2); art. 68 C. P. Q. There cannot be an appeal in this case from the Court of Review to the Supreme Court of Canada as the matter in controversy is not appealable as of right to Her Majesty's Privy Council; *Dufresne v. Guevremont* (3).

(1) Q. R. 12 S. C. 134.

(2) 27 Can. S. C. R. 197.

(3) 26 Can. S. C. R. 216.

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Lemieux contra. The decision appealed from is final, as it deprives the appellants of their right to have the objectionable commissioner removed, subjects them finally to an injustice and absolutely decides upon the merits of the petition. Had the petition been allowed, the whole matter would have been finally decided and the roll so far as made nullified. The controversy affects titles to land, and will bind rights in future, consequently an appeal would lie to the Privy Council, and under the statute 54 & 55 Vict. ch. 25 sec. 3, there is jurisdiction in this court to entertain the appeal. We refer to *Murray v. The Town of Westmount* (1); *Les Ecclésiastiques, etc., de St. Sulpice v. The City of Montreal* (2); *Reburn v. La Paroisse de St. Anne* (3); *Mayor etc., of The City of Montreal v. Brown and Springle* (4); *Stevenson v. City of Montreal* (5).

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—We are of opinion that there would be no appeal in this case *de plano* to the Privy Council, and consequently there can be no appeal to this court under the Act of 54 & 55 Vict. ch. 25, sec. 3, and further, that the judgment in question does not come within the provisions of section 24 (*j*), and that it is not a final judgment within the meaning of The Supreme and Exchequer Courts Act.

The appeal must be quashed with costs.

Appeal quashed with costs.

Solicitors for the appellants : *Gouin, Lemieux & Décarie.*

Solicitors for the respondents : *Ethier & Archambault.*

(1) 27 Can. S. C. R. 579.

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

(2) 16 Can. S. C. R. 399.

(4) 2 App. Cas. 168.

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