

LOOP SEWELL O'DELL (PLAINTIFF) ... APPELLANT; 1895

AND

*May 7.

*June 26.

M. L. L. GREGORY (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
LOWER CANADA (APPEAL SIDE).*Appeal—Jurisdiction—Future rights—R. S. C. c. 135, s. 29 (b)—56 V.
c. 29 (D).*

By R. S. C. c. 135 s. 29 (b), amended by 56 V. c. 29 (D) an appeal will lie to the Supreme Court of Canada from the judgments of the courts of highest resort in the province of Quebec, in cases where the amount in controversy is less than \$2,000, if the matter relates to any title to lands or tenements, annual rents and other matters or things where the rights in future might be bound.

Held, that the words "other matters or things" mean rights of property analogous to title to lands, &c., which are specifically mentioned and not personal rights; that "title" means a vested right or title already acquired though the enjoyment may be postponed; and that the right of a married woman to an annuity provided by her marriage contract in case she should become a widow is not a right in future which would authorize an appeal in an action by her husband against her for *séparation de corps* in which if judgment went against her the right to the annuity would be forfeited.

MOTION to quash appeal for want of jurisdiction.

The action in the case was brought by the appellant for *séparation de corps* from his wife, the respondent. By the Superior Court the separation asked for was granted, but on appeal to the Court of Queen's Bench that decision was reversed and the action dismissed. The plaintiff then sought to appeal to this court and a motion was made to quash such appeal.

Fitzpatrick Q.C. for the motion.

McCarthy Q.C. and *Lemieux* Q.C. contra.

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

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The judgment of the court was delivered by :

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THE CHIEF JUSTICE.—This action was instituted in the Superior Court by the present appellant against his wife, the respondent, for *séparation de corps*. The cause was heard by the Honourable Chief Justice of the Superior Court, Sir Louis Casault, who rendered judgment granting the conclusions taken by the appellant. From this judgment the respondent took an appeal to the Court of Queen's Bench, which court allowed the appeal, reversed the judgment of the Superior Court, and dismissed the action. From that judgment the present appeal has been taken. This the respondent has moved to quash for want of jurisdiction.

Appeals to this court from the province of Quebec are regulated by section 29 of the Supreme Court Act. Neither in this section, nor in any other part of the Act, is there any specific reference to actions of this class.

The first paragraph of section 29 prohibits appeals when the matter in controversy does not amount to \$2,000. Here the matter in controversy is not in the nature of a pecuniary demand. It is true, that the respondent's claim to certain furniture specified in an inventory attached to the marriage contract of the parties (under which they were married with a stipulation that they should be separate as to property) might incidentally be affected by the result of the action if that should be ultimately decided against the respondent. It is also true, that her contingent right to an annuity provided by the marriage contract as a provision for the respondent during widowhood in case she should survive her husband, would also be forfeited by a judgment adverse to her. The jurisdiction cannot, however, be founded on the claim relating to the furniture, for the reason that it does not appear to be of the value of \$2,000.

Subsection (b) of section 29 is as follows :

Unless the matter, if less than that amount (\$2,000), relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents and other matters or things where the rights in future might be bound.

If an appeal is admissible in the present case the jurisdiction can only be referred to something contained in this sub-clause. The first part of the subsection relates to appeals in the case of claims by the Crown. It is out of the question to say that this appeal involves any title to land, or to any annual rent. There only remains the words "and other matters or things where the rights in the future might be bound." I cannot hold that this confers jurisdiction. The other matters or things referred to must, on the ordinary rule of construction *noscitur a sociis*, be construed to mean matters and things *ejusdem generis* with those specifically mentioned. Then these are "title to lands and tenements and annual rents." We must therefore interpret the words "other matters and things" as meaning rights of property analogous to title to lands and annual rents, and not personal rights however important. Nothing of this kind is however involved here. I take the word "title" to mean a vested right or title, something to which the right is already acquired, though the enjoyment may be postponed. Then there is no vested right to the annuity during widowhood in case the respondent should survive her husband, that is an eventual right which might or might not come to be acquired by the respondent, according to the happening or not happening of the contingency. I conclude therefore that there are no matters or things involved in the action *ejusdem generis* with those particularly enumerated.

Had there been some actual right or title to lands or rents, or other similar matters or things, incidentally

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involved in the action, I should think it very doubtful if even that ought to have been sufficient to support the jurisdiction. To hold that there was jurisdiction for that reason in such a case as the present would be making an appeal, in a most important action in which the legislature had not thought fit to confer jurisdiction by a direct enactment, depend on subordinate incidents, in other words, invert the usual order which requires that the accessory should follow the principal.

It is sufficient, however, for the present purpose to say that the appeal does not come within any of the provisions of section 29, inasmuch as the action does not involve an amount equal to \$2,000, nor does it relate to any matters or things in the nature of vested property rights, which alone and not personal rights are intended by section 29 subsection (b) to be made the test of the right to appeal.

The appeal is quashed with costs.

Appeal quashed with costs.
