Supreme Court of Canada

Smith *v.* The Saint John City Railway Company and The Consolidated Electric Company *v* The Atlantic Trust Company and The Consolidated Electric Company *v.* Pratt (1898) 28 SCR 603

Date: 1898-06-14

Frederick H. Smith, Trustee (Plaintiff)

Appellant

And

The Saint John City Railway Company and Others (Defendants)

Respondents

The Consolidated Electric Company (Plaintiff)

Appellant

And

The Atlantic Trust Company and Others (Defendants)

Respondents

The Consolidated Electric Company (Defendant)

Appellant

And

Nathan D. Pratt and Others (Plaintiffs)

Respondents

1898: May 9, 10; 1898: June 14.

Present:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Appeal—Discretion of court appealed from—Costs.

It is only when some fundamental principle of justice has been ignored or some other gross error appears that the Supreme Court will interfere with the discretion of provincial courts in awarding or withholding costs.

Appeal from a decision of the Supreme Court of New Brunswick affirming the order of Hanington J. who decreed that the three suits had been consolidated by order of the late Judge in Equity, and that the costs should be taxed on the basis of such consolidation.

Mr. Justice Palmer, the late Judge in Equity, when the cases first came before him for hearing directed a

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consolidation, but no order was taken out by the plaintiffs. Judge Palmer having retired the hearing was proceeded with before Mr. Justice Hanington who gave effect to the previous direction and ordered the costs to be taxed as on a consolidated case. The full court affirmed this order and an appeal was then taken to this court.

*Pugsley* Q.C. for the appellants. There was no formal order for consolidation issued and Judge Palmer could not have directed it as separate pleas were made in the three suits.

An appeal will lie in these cases though they involve a question of costs only as the orders for taxation were made in error as to the facts and in violation of the rules of practice; *Archbald* v. *Delisle[[1]](#footnote-2)*. *In re Chennell, Jones* v. *Chennell[[2]](#footnote-3)*.

The order was not made by Mr. Justice Hanington in the exercise of a judicial discretion and if it were an appeal would lie, as sec. 27 of The Supreme Court Act does not apply to decretal orders in equity. And see Daniels' Chancery Practice, 6 ed. pp. 1271 and 1274.

*W. Cassels* Q.C., *Stockton* Q.C. and *Tilley* for the several respondents. The order for consolidation was properly granted on application of the plaintiffs. *Martin* v. *Martin & Co.[[3]](#footnote-4)*.

There is no appeal on a question of costs. *The Managers Metropolitan Asylum District* v. *Hill[[4]](#footnote-5)*; *McGugan* v. *Mc-Gugan[[5]](#footnote-6)*,

The judgment of the court was delivered by:

SEDGEWICK J.—We are all of opinion that these appeals should not be allowed.

They relate solely to an order of Mr. Justice Hanington asking that the costs of several actions should be taxed as if these actions had been consolidated by a formal order as they were intended to be as evidenced

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by the verbal direction of Mr. Justice Palmer then sitting as Judge in Equity and hearing the cases.

It is only in extreme cases where some fundamental principle of justice has been ignored, or where some gross error appears that this court will interfere with the discretion of provincial courts in awarding or withholding costs. This is not such a case. For my own part I think the order of Mr. Justice Hanington was properly made. There was no doubt that Mr. Justice Palmer when at an early stage he heard these cases directed that they should be consolidated and that direction was a matter of record.

If the appellants, they having the conduct of the several oases, did not choose to take out the order they have only themselves to blame, and Mr. Justice Hanington was perfectly right in putting in formal shape what was the expressed intention of his predecessor.

The learned counsel for the appellants, it seems to us, gave a wider scope to the order appealed from than we think it bears. The taxing authority will doubtless tax him not only for all the disbursements in the three cases but for all work necessarily done over and above what would have been done had there been only one suit.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: William Pugsley.

Solicitor for the respondents, The St. John City Railway Company and others: Arthur I. Trueman.

Solicitor for the respondents, The Imperial Trust Company of Canada: L. P. D. Tilley.

Solicitor for the respondents, The Molsons Bank and New Brunswick Electric Company: C. T. Coster.

Solicitor for the respondent Pratt: A. G. Blair.

Solicitor for the respondent Hay ward: H A. McKeown.

1. 25 Can. S. C. R. 1. [↑](#footnote-ref-2)
2. 8 Ch. D. 492. [↑](#footnote-ref-3)
3. [1897] 1 Q. B. 429. [↑](#footnote-ref-4)
4. 5 App. Cas. 582. [↑](#footnote-ref-5)
5. 21 Can. S. C. R. 267. [↑](#footnote-ref-6)