THE TOWN OF OUTREMONT (PLAINTIFF) ..... APPELLANT;

AND

ALFRED JOYCE (DEFENDANT) ..... RESPONDENT.

1910

*Oct. 4.
*Nov. 2.

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

Appeal—Jurisdiction—Matter in controversy—Instalment of municipal tax—Collateral effect of judgment.

In an action instituted in the Province of Quebec to recover the sum of $1,133.53 claimed as an instalment of an amount exceeding $2,000, imposed on the defendant's lands for special taxes, the Supreme Court of Canada has no jurisdiction to entertain an appeal although the judgment complained of may be conclusive in regard to the further instalments accruing under the same by-law which would exceed the amount mentioned in the statute limiting the jurisdiction of the Court. *Dominion Salvage and Wrecking Co.* v. *Brown* (20 Can. S.C.R. 203) followed.

MOTION to quash an appeal from the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal, which dismissed the plaintiff's action with costs.

The action was for the recovery of $1,133.53 claimed by the town corporation as the amount of an instalment of taxes extending over a period of twenty years (which, in gross, exceeded $2,000) imposed on the lands of the defendant as a special tax for the improvement of the highways of the municipality. The action was dismissed by the Superior Court, at the

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Duff and Anglin JJ.

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trial, and the appeal was asserted from the judgment of the Court of King's Bench affirming this decision.

The questions raised on the argument of the motion are stated in the judgment of the Chief Justice now reported.

L. H. Davidson K.C. for the motion.

Beaubien K.C. contra.

THE CHIEF JUSTICE.—This is an action brought to recover a sum of $1,133.53 alleged to be an instalment due on a larger amount for municipal taxes, which, it was said at the argument, is within the appealable limit. The defence is based on grounds that involve the liability of the respondent for the whole assessment, and the judgment appealed from is conclusive on the liability in any action for the other instalments. By the conclusion of the declaration the appellants have with much care limited the matter in controversy in this proceeding to the amount of the one instalment due ($1,133.53), and they could not, if successful, get judgment for more. The statute enacts:

> No appeal shall lie wherein the matter in controversy does not amount to the sum or value of two thousand dollars,

and we are, therefore, without jurisdiction to entertain this appeal.

The motion to quash must be granted with costs.

See hereon *Dominion Salvage and Wrecking Company* v. *Brown*(1).

GIROUARD and DAVIES JJ. agreed in the opinion stated by the Chief Justice.

(1) 20 Can. S.C.R. 203.

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Idington J.

IDINGTON J.—I am unable to distinguish this from many other cases in which jurisdiction has been denied merely because the immediate sum or instalment did not reach the minimum sum limiting jurisdiction, though it might seem probable that a decision as to one instalment might ultimately have more or less effect on the recovery of others besides, and all making a total far exceeding the said minimum sum.

The motion to quash should, therefore, prevail.

DUFF and ANGLIN JJ. concurred in the opinion of the Chief Justice.

Appeal quashed with costs.

Solicitors for the appellant: *Beaubien & Lamarche.*
Solicitors for the respondent: *Davidson & Ritchie.*