

1909
 * May 4.
 * May 28.

LA COMPAGNIE D'AQUEDUC DE
 LA JEUNE-LORETTE (DEFEND-
 ANTS) } APPELLANTS;

AND

JOSEPH ALEXIS VERRETT (PLAIN-
 TIFF) } RESPONDENT.

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

*Appeal—Jurisdiction—Matter in controversy—Municipal franchise—
 Demolition of waterworks—Title to land—Future rights.*

The action, instituted in the Province of Quebec, was for a declaration of the plaintiff's exclusive right under a municipal franchise to construct and operate waterworks within an area defined in a municipal by-law, for an injunction against the defendants constructing or operating a rival system of waterworks within that area, an order for the removal of water-pipes laid by them within that area, and for \$86 damages. On an appeal from a judgment maintaining the plaintiff's action:

Held, Girouard and Idington JJ. dissenting, that, as it did not appear from the record that the sum or value demanded by the action was of the amount limited by the Supreme Court Act in respect to appeals from the Province of Quebec nor that any title to lands or future rights were affected, an appeal would not lie to the Supreme Court of Canada.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Quebec, maintaining the plaintiff's action with costs. The nature of the relief sought by the plaintiff's action is stated in the head-note. By the

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

judgment in the Superior Court (affirmed by the judgment appealed from) it was declared that the plaintiff had the exclusive right, under a municipal by-law, of placing water-pipes on certain streets in the Village of St. Ambroise de la Jeune-Lorette (the *mise-en-cause*), for the purpose of supplying water to part of the municipality during twenty-five years from the 10th April, 1893, and that the defendants had infringed that privilege by placing water-pipes, in connection with their rival system of waterworks, on those streets to the injury of the plaintiff, and it was ordered that the water-pipes so placed by the defendants should be removed; the defendants were enjoined against operating waterworks within the area in question, condemned to pay to the plaintiff the sum of \$50 damages, with costs, and the right was reserved to the plaintiff to take such further action as he might be advised for the recovery of damages subsequent to the date of his action. At the hearing of the motion to quash the appeal to the Supreme Court of Canada for want of jurisdiction, affidavits were filed, on behalf of the appellants, shewing that the total value of their system of waterworks was from \$20,000 to \$25,000; that the actual value of their works in the Village of St. Ambroise de la Jeune-Lorette, apart from the value of the land, was \$16,000; that the portion ordered to be demolished was capable of returning them an annual revenue of \$500 or \$600 from one part of the municipality and that the remainder, which would be destroyed in consequence of the judgment, was of the value of from \$8,000 to \$10,000 and capable of producing an annual revenue of \$600.

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E. J. Flynn K.C. supported the motion.

C. E. Dorion K.C. *contra.*

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The Chief
Justice.

THE CHIEF JUSTICE.—This is a motion to quash the appeal for want of jurisdiction. This action was brought by Verrett against La Compagnie de l'Aqueduc and the corporation of the Village of St. Ambroise *mise-en-cause*. By his action the plaintiff asks for a declaration that certain rights and privileges to construct an aqueduct granted to him by the municipal corporation, defendant, were exclusive; and that in constructing another aqueduct La Compagnie de l'Aqueduc de la Jeune-Lorette had infringed his rights and should be enjoined and restrained from constructing their aqueduct, and he also asks for a condemnation against the defendant for \$86 for special damages. The franchise is not in question and the water company may, by diverting their line, still carry on their operations. The action was maintained in the Superior Court and the judgment was affirmed by the court of appeal. Respondent says that no appeal lies here. The amount claimed is not within the appealable limit and no title to land or rights in future are involved.

I would grant the motion with costs fixed at \$50.

GIROUARD J. (dissenting).—The matter in dispute in this case exceeds \$2,000 as the value of the works to be demolished, as proved in the action, is more than \$2,000. What we have to consider is not only the few pipes to be demolished, but also how far the whole aqueduct will be affected by the judgment. If those pipes be removed the whole value of the aqueduct is involved and it was admitted before us that it exceeds \$2,000.

I think, therefore, that we have jurisdiction.

DAVIES J.—I concur with the opinion of the Chief Justice.

IDINGTON J. (dissenting).—I cannot see how to distinguish this case in principle from that upon which this court proceeded to hear the case of *Rouveau v. Pouliot* (1).

In that as here the existence of a franchise and extent thereof was all that was in question.

There a toll bridge franchise created by 58 Geo. III., ch. 20 (L.C.), was invoked by the grantee thereof to have another and competitive bridge demolished.

Here the respondent as owner of a water supply franchise has got a judgment of demolition against the appellant in respect of a water supply pipe the municipal authorities had permitted to be laid down in the street to or over which the respondent's franchise extended.

The one owner's property earned for him profits by tolls on travel and the other by tolls on water supplied.

Moreover, *Rouveau v. Pouliot* (1), followed *Galarneau v. Guilbault* (2), which was the case of a toll bridge plus a ferry.

I think the jurisprudence of this court has determined by these and numerous other cases not so directly, but yet in principle alike thereto the meaning to be attached to the words ("other matters or things where rights in future might be bound") in section 46, sub-section (b), of the "Supreme Court Act," and that they thereby cover this case.

The motion should be therefore dismissed.

DUFF and ANGLIN JJ. agreed in the opinion stated by the Chief Justice.

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(1) 36 Can. S.C.R. 26.

(2) 16 Can. S.C.R. 579.

1909*Appeal quashed with costs.*

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Solicitors for the appellants: *Drouin, Drouin & Drouin.*
Solicitor for the respondent: *E. J. Flynn.*
