

CANADA / JUDGMENT

Ville de St. Jean v. Molleur

(1908) 40 SCR 139

COURT

Supreme Court of Canada

DECIDED

23 March 1908

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Ville de St. Jean v. Molleur

Collection

Supreme Court Judgments

Date

1908-03-23

Report

(1908) 40 SCR 139

Judges

Fitzpatrick, Charles; Davies, Louis Henry; Idington, John; MacLennan, James; Duff, Lyman Poore

On appeal from

Quebec

Subjects

Appeal

Decision Content

Supreme Court of Canada

Ville de St. Jean v. Molleur, (1908) 40 S.C.R. 139

Date: 1908-03-23

La Ville De St. Jean (Plaintiff) Appellant;

and

Auglare L. Molleur Et Vir (Defendants) Respondents.

1908: February 18. 1908: March 23.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, MacLennan and Duff JJ.

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

Appeal—Demurrer—Final judgment—Jurisdiction.

The declaration in an action by a municipality claiming forfeiture of a franchise for non-fulfilment of the obligations imposed in respect thereof alleged in five counts as many different grounds for such forfeiture. The defendant demurred generally to the declaration and specifically to each count. The demurrer was sustained as to three counts and dismissed as to the other two. On appeal from the decision of the registrar refusing an order to affirm the jurisdiction of the Supreme Court to entertain an appeal from the judgment maintaining the demurrer.

Held, that each count contained a distinct ground on which forfeiture could be granted and a judgment depriving the municipality of its right to rely on any such ground was a final judgment in respect thereof which could be appealed to the Supreme Court of Canada.

APPEAL from the judgment of the registrar of the Supreme Court of Canada, sitting as a judge in chambers, whereby it was held that the Supreme Court of Canada had no jurisdiction to hear the appeal.

The decision appealed from was upon an application made to the registrar, in chambers, under Rule I. of the Rules of Practice of the Supreme Court of Canada, for an order affirming the jurisdiction of the court to entertain the appeal and the approval of the security for an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court for the District of Iberville, by which the demurrer of the defendants to three counts in the plaintiff's declaration was allowed with costs. The circumstances of the case are stated in the following reasons for the judgment of

The Registrar.—"This is an application under Rule 1 of the Supreme Court Rules, for an order affirming the jurisdiction of the court.

"Bisaillon K.C. and Geoffrion K.C., appeared in support of the application.

"Belcourt K.C. and Roy K.C. shewed cause.

"The facts of the case, as disclosed by the material filed, are as follows:

"Pursuant to the provisions of chapter 65 of the Consolidated Statutes of Quebec, being 'An Act respecting Incorporated Joint Stock Companies' for supplying cities, towns and villages with gas and water, a company received a charter of incorporation to supply water to the City of St. Johns. Subsequently, by the Act, 40 Vict, of the Statutes of Quebec, chapter 68, being 'An Act concerning the Waterworks of St. Johns,' the said water-works company became vested in Louis Molleur, the younger, of the Town of St. Johns, and he was substituted for the company as proprietor of all its property and charged with all its obligations and responsibilities. By the said last mentioned Act, and by the second section thereof, the said Molleur was granted the exclusive right and privilege

to place pipes and water conduits under the streets and public squares of the town.

"By the third section it is provided that, if the said Molleur should refuse or neglect to fulfil all the obligations imposed upon him by the Act, after having been placed en demeure so to do by the said town, he and his representatives might be deprived of the exclusive privilege above mentioned.

"Section 4 provided that the water should be pure and healthy and should be sold and distributed to such of the inhabitants of the town as should be willing to receive it at the price and on the conditions which the said Molleur should establish.

"By section 5 the corporation obtained the right, without charge, to use the water from the water-works for the extinction of fires and to construct and place such pipes, reservoirs, etc., as should be necessary for utilizing the said water for fire purposes, and Molleur was bound, on the demand of the corporation, to keep a constant pressure of 50 pounds of steam per square inch in the boiler of the water-works, so that the same might be made use of in case of fire, upon the corporation paying him a sum to be fixed by arbitrators in the absence of an agreement.

"The statute also provided, by section 6, that, any time after the year 1899, the corporation should have the right to purchase the water-works by paying the value thereof, which, in default of agreement, should be settled by arbitration.

"By section 9 the corporation might pass a by-law compelling all the ratepayers of St. John to supply themselves with water from the water-works, and by section 10 provision was made for fixing a tariff of fees to be paid by the ratepayers in the event of the corporation and Molleur being unable to agree to the same.

"Section 12 authorized the corporation to require Molleur to lay down pipes in any street in the town in which there were none, provided that the owner of the water-works might be able to levy an annual amount equal to ten per cent. on the value of the work and material supplied.

"The present action is brought under the third section of the statute to have it declared that Molleur has forfeited all his rights and privileges for the following reasons set up in the plaintiff's declaration:

- (a) The impurity of the water supplied;
- (b) The lack and insufficiency of water pressure for fire purposes;
- (c) The lack and insufficiency of pressure for the supply of water at the domiciles of the subscribers;
- (d) The unjustifiable increase in the rates charged to the consumers of the water in the town who were bound to take their supply from the said water-works;
- (e) The bad state of the water-works and its accessories and its present incapacity to fulfil the obligations to which the proprietors were bound towards the town and its ratepayers.

"The defendant demurred to the declaration generally, and also specifically as to each count thereof.

"The Superior Court allowed the demurrer as to the grounds above mentioned (b), (c), and (d), but dismissed it as against the other counts in the declaration.

"An appeal taken from this judgment to the Court of King's Bench was dismissed. "Under the practice in the Province of Quebec, an appeal from an interlocutory judgment lies to the Court of King's Bench (appeal side) only by leave of a judge of that court, while an appeal lies to the same court[1] where the judgment of the Superior Court is a final judgment, in all cases except:

'1. In matters of certiorari;

'2. In matters concerning municipal corporations or officers, as provided in article 1006 C.P.Q.;

'3. In matters in which the sum claimed or value of the thing demanded is less than two hundred dollars, and in which judgment has been rendered by the Court of Review;

'4. At the instance of any party who has inscribed in review any cause other than those mentioned in the preceding paragraph, and has proceeded to judgment on such inscription, when such judgment confirms that rendered in first instance."

"I understand it to be admitted by the plaintiff in the present case that according to the practice in the Province of Quebec, the judgment herein was interlocutory and for that reason they petitioned a judge of the Court of Appeal for leave to appeal from the judgment of the Superior Court, and it was by virtue of that leave that the judgment of the Court of King's Bench against which it is now desired to appeal to the Supreme Court, was given.

"The plaintiffs contend that a judgment may be interlocutory according to the procedure in the Province of Quebec, but be a final judgment as these words are construed by the Supreme Court. I do not find any case supporting such a contention. But the contrary is to be inferred from the judgment of the Supreme Court in a recent case of Desaulniers v. Payette[2], in which the Chief Justice, Sir Elzéar Taschereau, speaking for the court, said:

‘Avec la permission spéciale requise pour en appeler d'un jugement interlocutoire, ce jugement fut porté en appel à la cour du banc du roi par les opposants, mais leur appel fut débouté.

'Ils veulent maintenant en appeler de ce jugement de la cour d'appel. Mais nous ne pouvons recevoir leur appel.

'Il n'y a appel à cette cour que d'un jugement final. Or le jugement en question n'est évidemment qu'un jugement interlocutoire, un jugement d'instruction. Les appelants eux-mêmes n'ont pas cru qu'ils pouvaient en appeler de plein droit à la cour d'appel comme d'un jugement final. Et ils avaient raison. Or, il n'est pas plus final maintenant qu'il l'était alors.'

"The plaintiff relies mainly in supporting its contention that there is jurisdiction to hear this appeal, upon the decision of this court in Shields v. Peak[3]; and were it not for more recent decisions of the Supreme Court, I would have been of the opinion that that case could not be

distinguished from the present. There the respondent sued for \$4,000 on the common counts, and also by special count alleged that the purchase of goods had been made by the defendants when they had probable cause for believing themselves to be insolvent, and with intent to defraud the plaintiff. The defendants amongst other pleas pleaded that the contract out of which the alleged cause of action arose was made in England and not in Canada. To this plea the plaintiff demurred. Judgment was given in favour of the plaintiff on the demurrer to the plea in question, and this judgment was affirmed by the Court of Appeal for Ontario. The defendants thereupon appealed to the Supreme Court of Canada, and when the case was called, an objection was taken to the jurisdiction on the ground that this was not an appeal from a final judgment. The judgment of the majority of the court on the question of jurisdiction was given by Sir Henry Strong, in which he said that the case was not distinguishable from *Chevallier v. Cuvillier*[4], and that an appeal would lie.

"The latter case, whether distinguishable in principle or not from *Shields v. Peak*[5], certainly differed from that case in that the demurrer was to the entire cause of action and the judgment finally disposed of the rights of the parties. Indeed, I find on looking at the record in the Supreme Court that the judgment of the Superior Court is in the following terms:

'Maintient la dite défense en droit et déboute le dit demandeur de sa présente demande contre la dite défenderesse,' except as to certain immovables with respect to which the defendants by their pleas expressly admitted the plaintiff's rights. And in the judgment of Chief Justice Sir A. A. Dorion, he says, in referring to the judgment of the court below:

'The court below maintained the demurrer and dismissed the appellant's action quoad the respondents, except as to the two lots of land purchased from J. D. Bernard.' "In *Shields v. Peak*[6], *Taschereau* and *Gwynne JJ.* dissented, and Mr. Justice Gwynne points out in his judgment that 'In *Chevallier v. Cuvillier*[7], the demurrer was to a particular specified portion of the claim in the action and the allowance of a demurrer in such case was undoubtedly a final judgment as to the claim demurred to. * * * But the case here is quite different; it is a judgment allowing a demurrer to one of several pleas upon all of which issues in fact are joined, and yet to be tried. Such a judgment decides nothing as to the action or suit in which the plea is pleaded; the action remains still wholly undetermined.'

"The view of the majority of the Supreme Court as determined by *Shields v. Peak*[6], is not in harmony with either the earlier or later jurisprudence of the court. The first case reported is that of *Bank of British North America v. Walker*[8]. There the declaration contained eight counts, and six of these were demurred to. The seventh and eighth counts of the declaration were so framed that a verdict thereon in favour of the plaintiff if supported by the evidence would stand, whatever might be the decision of the court upon the demurrers. An appeal was then taken to the Supreme Court from the judgment on the demurrers, but no appeal was taken from the judgment of the trial judge which ordered a judgment in favour of the plaintiffs on the verdict of the jury, the reason for this probably being that no appeal had been taken from the trial judge on this branch of the case to the full court of British Columbia. After argument the Supreme Court held that the judgment on the demurrers was not one from which an appeal would lie and ordered it

to be quashed, but further ordered that the defendants might appeal per saltum from the judgment of the trial judge and from the judgment on the demurrers.

"The next case is that of *Reid v. Ramsay*[9]. This was an action for assault and false imprisonment. The defendants by their second plea justified the assault by virtue of a writ of *capias ad satisf.* issued against the plaintiff under a judgment recovered against him. To this plea the plaintiff made four replications. The defendant demurred to the second and fourth, and in addition the defendant pleaded to the fourth replication a further rejoinder to which the plaintiff demurred. Judgment was rendered for the plaintiff on all the demurrers. The defendant appealed to the Supreme Court of Canada and the appeal was quashed on the ground that the judgment appealed against was not final.

"In *Rattray v. Larue*[10], the appellant demurred to an intervention and the judgment of the Superior Court maintaining the demurrer, disposed finally of the rights of the parties in the intervention. The Supreme Court heard an appeal in this case from the Court of King's Bench and restored the judgment of the Superior Court. But the case is clearly distinguishable from *Shields v. Peak*, in that it was a demurrer to the entire cause of action and the judgment upon it finally disposed of the action.

"In *Shaw v. The Canadian Pacific Railway Co.*[11], in an action for a breach of contract by a railway company to carry the plaintiff's goods in safety, the defendant set up a special contract limiting its liability to \$100, to which the plaintiff made two replications, one of which was that the special contract could not avail against the provisions of section 25 of the "Railway Act of 1879." The defendant demurred to this replication on the ground that it was a departure from the declaration which was in contract, while the replication was in tort. The demurrer was allowed in the courts below and an appeal to the Supreme Court was quashed on the ground that the judgment was not final.

"The judgment in this case would appear to be entirely in line with the dissenting judgments in *Shields v. Peak*[12].

"Finally, in *Griffith v. Harwood*[13], we have a case which appears to me to be entirely indistinguishable from the present. Here a plea of prescription was set up as one of the defences to the plaintiff's action. The appellants urged, just as the plaintiffs do in the present case, that in so far as the issue raised upon the plea of prescription was concerned, the judgment appealed from was final and prohibited the defendant from availing himself of that defence, which went to the root of the action. The court, however, following the earlier decisions, quashed the appeal.

"I am of the opinion, therefore, after reviewing all the decisions of the court, that by the more recent decisions it is now well settled that where a demurrer is not to the entire cause of action, but only as to some pleading, and where, notwithstanding the judgment on the demurrer., the action still subsists and there remain issues which require to be tried and disposed of by the court of first instance, no appeal lies from a judgment thereon to the Supreme Court of Canada.

"It is contended in the present case that the result of quashing the present appeal may preclude the plaintiff from questioning the judgment of the Court of Appeal upon the present demurrers, either in the court below or in this court, if the case subsequently came on to be heard in an appeal on the merits, and *Shaw v. St. Louis*[14] is cited as an authority for that proposition. Even if this were the case, the answer might be made which was made to the same argument in *Ontario & Quebec Rly. Go. v. Marcheterre*[15], where Sir Elzéar Taschereau, speaking for the court, said:

"The appellant argued, referring to *Shaw v. St. Louis*[14], that he might eventually find himself precluded from appealing to this court. Whether that is so or not, a point which of course we have not to determine here, that will be simply because the statute does not provide for an appeal in such a case."

"Later on, however, in *Desaulniers v. Payette*[16], there is no doubt the court, speaking through the Chief Justice, expressly holds that where an interlocutory judgment had been carried to the Court of King's Bench and disposed of there in a certain way, that judgment could not be reviewed if the case subsequently, on the merits, reached the Court of King's Bench and an appeal was taken from the second judgment of that court to the Supreme Court of Canada, the Chief Justice making use of the following argument in support of that proposition:

'And likewise, when the case came up again before the Court of Appeal, that court could not but hold, as it did by the judgment now appealed from, that the Superior Court had committed no error when it had simply acted in accordance with the judgment rendered upon the first appeal.

'Now, if the Court of Appeal (in its second judgment) has rendered the judgment that it had in law to give, the appellants' attempt to shew error in that judgment necessarily fails, and if there is no error in it they cannot expect us to reverse it. They seem to be under the impression that, because the first judgment ordering them to give security was not appealable to this court, *Desaulniers v. Payette*[17], they can now ask us upon this appeal from the last judgment, to review that first judgment. But that cannot be. As we have often said, an interlocutory judgment that cannot be appealed from is *res judicata*. But it is not merely because a judgment is *res judicata* that it is appealable, as the appellants would contend.'

"It would appear to me, however, that the recent judgment of the court in *Willson v. Shawinigan Carbide Co.*[18], must be taken to overrule the decision in *Desaulniers v. Payette*[19], for there the court says, referring to an analogous case where an appellant filed a declinatory exception to the jurisdiction of the Supreme Court:

'The judgment appealed from does not dispose of the whole case but merely an incident raised by a declinatory exception which was maintained by the trial court and rejected by the Court of Appeal. Of course in both the trial court and the Court of Appeal the question cannot be raised again. It is there chose jugée, but it can be raised here, if after being disposed of on the merits, the case, comes up again before this court.

'The reason for this ruling is that an appeal on the merits opens all the interlocutories, especially if a reservation or an exception be filed immediately after the rendering of the interlocutories.'

"The application to affirm the jurisdiction must therefore be refused with costs.

"The present motion was coupled with another to allow the plaintiff to deposit \$500 in court as security for its appeal. I understand that my judgment on this application will be appealed to the full court. I will, therefore, reserve judgment on the application to allow the security until after that appeal has been disposed of which will preserve the plaintiff's rights to appeal, although more than 60 days will by that time have elapsed from the judgment below. It has been held (Attorney-General of Quebec v. Scott[20]) that the appellant cannot be prejudiced by the delay of the court in dealing with an application to allow the security."

On the appeal, counsel appeared for the parties, as follows:

Bisaillon E.G. and Aimé Geoffrion K.C. for the appellant.

Roy K.C. for the respondents.

The judgment of the court was delivered by The Chief Justice:—The plaintiff applied under Rule 1 of the Supreme Court Rules to the registrar for an order affirming the jurisdiction of this court to hear an appeal from the judgment of the Court of King's Bench which confirmed the judgment of the Superior Court.

The registrar refused to make the order on the ground that the judgment in question is not a final judgment within the meaning of the Supreme Court Act and I was at the argument inclined to agree with him on the authority of Griffith v. Harwood[21] and other cases in this court. Further consideration, however, has brought me to a different conclusion.

By the material before us it appears that the defendant acquired by an Act of the Legislature of Quebec (40 Vict. ch. 68) the exclusive right to place, subject to various obligations, pipes and water conduits under the streets and public squares of the Town of St. Jean.

The third section of the Act provides that if the defendant concessionnaire refuses or neglects to fulfil any of the obligations imposed upon him he is liable to forfeit the privilege granted, and the action is brought by the Town of St. Johns claiming a declaration of forfeiture under that section. The five several breaches of the statutory obligations relied upon are set out in separate paragraphs or counts of the declaration. To this declaration the defendants filed a general demurrer and in addition demurred specifically to each count. The Superior Court allowed the demurrer in respect of three of the counts, holding that none of these three counts disclosed facts constituting a legal ground of forfeiture within the provisions of the Act. On appeal, the judgment of the Superior Court was affirmed and on the argument here it was not disputed that the decision of the Court of Appeal constitutes a final termination, so far as the courts of Quebec are concerned, of the matter in dispute upon the demurrer, that is to say, the question whether the facts stated in any of the counts in respect to which the demurrer is allowed constituted a ground of forfeiture of the privilege, has been finally decided in the negative; the judgment

appealed from is final as to those issues, costs are awarded and nothing further remains to be done. See *Shaw v. St. Louis*[22], at pages 402 and 403, per Taschereau J.[23]; none of the questions so decided in appeal can be reheard or re-examined in that court.

The question now is whether such a decision was "a final judgment" within the meaning of the Supreme Court Act. Chapter 139, R.S.C. (1906), sec. 2, sub-sec. (e), defines a final judgment to mean

any judgment, rule, order or decision whereby the action, suit, cause, matter or other judicial proceeding is finally determined and concluded.

If the declaration contained only the counts to which the demurrer was maintained, nobody would dispute that such a judgment allowing a demurrer to the whole action would be a final judgment within the meaning of that section and inasmuch as the grounds or causes of action set out in each of these counts if good in law are distinct grounds or causes upon any one of which the conclusions of the action claiming a declaration of forfeiture might be granted, it seems to me that a judgment finally depriving the plaintiff municipality of the right to maintain its action upon any of those grounds or causes is with respect to them a final judgment, that is to say a judgment by which the rights of the parties on the issues raised by those counts are finally determined and concluded, except in so far as we have jurisdiction to entertain the appeal. It has been argued that there can be only one final judgment in each action, that is to say, the judgment that finally disposes of the whole action; but I do not think that such a limited construction should be put upon the words "final judgment"; although it might be said that if adopted the result would be to give to these words their literal meaning. The French text-writers interpret or define the term "jugement définitif" which corresponds with "final judgment," by comparison with and in opposition to "jugement provisoire, jugement préliminaire et jugement interlocutoire" all of which they include under the general classification of "jugements avant faire droit" Colmet-Daage, in his valuable notes on Boitard, *Procédure civile* (15 ed.), vol. 1, page 255, says that Boitard is in error when he defines the final judgment as the one which puts an end to the suit and removes it completely from the court in which the judgment is rendered. Boitard says:

Le jugement définitif dessaisit le tribunal et termine la contestation devant lui.

In his notes Colmet-Daage says:

La définition que donne Boitard du jugement définitif est inexacte; il y a bien des jugements de cette nature qui ne terminent pas la contestation; tels sont ceux qui statuent sur des conclusions d'exception, sur une demande en récusation, sur une demande en renvoi, ceux qui rejettent une demande en péremption d'instance, etc., etc. On ne peut définir les jugements définitifs que d'une manière indirecte, en disant: Les jugements définitifs sont tous ceux qui ne rentrent pas dans l'une des trois sortes, des jugements d'avant faire droit.

Dalloz, Laurent and Pigeau all concur in the opinion that there may be several final judgments in the same case, in the sense that there may be several judgments in the same case which finally decide and dispose of particular grounds of action or issues, without finally disposing of the whole action.

Dalloz, vo. "Jugement" ch. 3, sec. 1, paragraph 12, says:

De la nature des jugements d'avant faire droit ressortent, par opposition, les caractères des jugements définitifs. Et il résulte clairement de la distinction qui existe entre eux qu'il ne faut pas prendre le mot jugement définitif dans son acception rigoureusement littérale, en ne l'appliquant qu'aux décisions qui terminent la contestation d'une manière définitive; ce serait là une erreur. Les jugements définitifs, en effet, sont tous ceux qui ne se bornent pas à préjuger, mais qui jugent un point, une question quelconque du procès, non pas seulement lorsqu'ils statuent sur le fond, mais aussi lorsqu'ils prononcent sur les incidents, sur les exceptions, sur les nullités, sur les fins de non-recevoir, etc., en premier comme en dernier ressort.

Carré & Chauveau, t. 1, p. 565, note 1, 4th. and t. 4, p. 60 to same effect.

Laurent, vol. 20, n. 22, says:

Il peut dans une même affaire intervenir plusieurs jugements définitifs en ce sens qu'ils décident définitivement certains points débattus entre les parties; tous ces jugements ont l'autorité de la chose jugée.

At No. 23;—

Quand un jugement, interlocutoire en apparence, décide réellement un point contesté entre les parties, il est définitif et il a, par conséquent, l'autorité de la chose jugée.

Pigeau, Procédure Civile (2 ed., 1811), vol. 1, page 484:

Le jugement définitif est celui qui détermine la contestation. And then he goes on to say:

2. Il y a deux observations à faire sur les jugements définitifs:
 1. La première, que le jugement peut n'être définitif que sur un ou plusieurs chefs et non sur le surplus:
 2. Un jugement peut contenir en même temps une disposition définitive et un avant faire droit.

The effect of the judgment appealed from was to put an end to the issues raised by the counts with respect to which the demurrer was maintained and to that extent the action was finally disposed of and it was "chose jugée."

In *Shields v. Peak*[24], it was held that a decision on a demurrer to a part of the action only is a final judgment in a judicial proceeding within the meaning of the "Supreme Court Act."

And Mr. Justice Gwynne, who dissented, referring to *Chevallier v. Cuvillier*[25], says:

The demurrer is *Chevallier v. Cuvillier*²⁵ was to a particular specified portion of the claim ascertained in the action and the allowance of the demurrer in such a case was undoubtedly a final judgement as to the claim demurred to.

Here the judgment does not, because of the nature of the proceedings deprive the plaintiff, of a particular specified portion of his claim; but as a result of the judgment the plaintiff's action is dismissed with respect to the grounds of action contained in the counts demurred to.

In *Baptist v. Baptist*^[26], it was held that the judgment was *res judicata* between the parties and final on the petition for continuance of the suit and therefore appealable to this court, and speaking for the court, Taschereau J., says, at page 429: Now though we have held that no interlocutory judgments can be reviewed by this court under that clause, and though in form, perhaps, this is, in one sense, an interlocutory judgment, yet, it is clear that, though upon a side issue, the controversy between the parties has been, as far as can be in the provincial courts, determined and concluded.

Mr. Justice Duff, to whom I am indebted for much assistance in the preparation of these notes, refers me to the case of *McDonald v. Belcher*^[27]. That was an action brought in the Territorial Court of the Yukon Territory in which the plaintiff Belcher claimed certain sums from the defendant McDonald, among them a sum of \$50,000. At the trial the learned judge decided adversely to the plaintiffs in respect to this claim and directed a reference with respect to the remaining sums. Judgment having eventually been given upon the referee's report in respect to the remaining claims, an appeal was taken by the plaintiffs to the Supreme Court of British Columbia under 62 & 63 Vict. ch. 11, sec. 7 (D.), which authorized an appeal to that court from the Territorial Court of the Yukon in the case of final judgments.

On the appeal the defendant set up the contention that with respect to the item of \$50,000 the judgment of the learned judge at the trial being an adjudication upon the dispute between the parties in respect of that item and not having been appealed from within the time allotted by the Act referred to, could not be reviewed. The Supreme Court of British Columbia accepted this contention. On appeal to this court, the judgment of that court was reversed. On appeal again to the Privy Council it was there held that with respect to that item the judgment or decision of the learned judge at the trial was a final judgment. At page 433 Lord Halsbury uses these words:

The particular matter, however, upon which the case before their lordships depends * * * is whether the question of an indebtedness by the defendant * * * to the extent of \$50,000 was or was not finally disposed of by the trial which took place before the territorial judge., that is to say, whether the language used by the learned judge in disposing of the matter constituted a final judgment of the court.

This question was answered in the affirmative.

In the present case it is true that there were not separate demands. There was one conclusion only; but there were several counts, each putting forward an independent title to the relief claimed; and the effect of the judgment appealed from was as regards the counts in respect of

which the demurrer was allowed precisely the same as if the action had gone to trial and judgment had been given. The controversy regarding the matters raised by them is as effectually and conclusively disposed of. And it is this quality of conclusiveness which determines the character of a judgment as a final judgment, not its relation in point of time to other proceedings. When by a judgment a distinct and separate ground of action is, to use Lord Halsbury's words, "finally disposed of it is in the ordinary use of the words a final judgment with respect to that ground of action.

Our decision in this appeal as to the meaning of the term final judgment is, of course, not limited to appeals from the Province of Quebec, but is applicable to those from the other provinces as well. And when it is considered that the "Judicature Act" is now in force in nearly all these provinces and that under it many different kinds of action may be joined together and many different counterclaims submitted by the defendants resulting possibly in many distinct issues alike of law and fact being raised it will at once be seen how illusory in many cases it would be to put the limited construction contended for upon the word final judgment.

The substantial controversies between the litigants might in many cases be decided by the provincial courts, but if a single issue of law or fact remained open on the record no appeal would lie to this court, and if an appeal eventually came here from the judgment of the provincial court on this final issue we would be precluded in such appeal from hearing or opening the judgments already given in what might well be the most substantial and important subjects of controversy.

I am of opinion that this court has jurisdiction to hear the appeal and the order of the registrar is modified accordingly.

Appeal allowed.

Solicitors for the appellant: Bisailon & Bossard.

Solicitor for the respondents: Philippe Roy.

[1] Art. 43 C.P.Q,

[2] 33 Can. S.C.R. 340.

[3] 8 Can. S.C.R. 579.

[4] 4 Can. S.C.R. 605.

[5] 8 Can. S.C.R. 579.

[6] 8. Can. S.C.R. 579.

[7] 4 Can. S.C.R. 605.

6 8. Can. S.C.R. 579.

[8] Cass. Dig. (2 ed.) 214.

- [9] Cass. Dig. (2 ed.) 420.
- [10] 15 Can. S.C.R. 102.
- [11] 16 Can. S.C.R. 703.
- [12] 8 Can. S.C.R. 579.
- [13] 30 Can. S.C.R. 315.
- [14] 8 Can. S.C.R. 385.
- [15] 17 Can. S.C.R. 141.
- 14 8 Can. S.C.R. 385.
- [16] 35 Can. S.C.R. 1.
- [17] 33 Can. S.C.R. 340.
- [18] 37 Can. S.C.R. 535.
- [19] 35 Can. S.C.R. 1.
- [20] 34 Can. S.C.R. 282.
- [21] 30 Can., S.C.R. 315.
- [22] 8 Can. S.C.R. 385. Co., 184 U.S.R. 77, at p. 92, and United States v. Camon, 184 U.S.R. 572, at p. 574.
- [23] See State of Illinois v. IllinoisCentral Rd
- [24] 8 Can. S.C.R. 579.
- [25] 4 Can. S.C.R. 605.
- 25 4 Can. S.C.R. 605.
- [26] 21 Can. S.C.R. 425.
- [27] [1904] A.C. 429.

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