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THE CITY OF SYDNEY (DEFENDANT).....APPELLANT;

1944

AND

\*Nov. 28, 29  
\*Dec. 20

GRACE I. WRIGHT (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA  
IN BANCO

*Appeal—Jurisdiction—Supreme Court Act (R.S.C. 1927, c. 35), s. 39—  
“Amount or value” of the “matter in controversy” in the appeal—  
Appeal from judgment restraining appellant from proceeding with tax  
sale.*

The City of Sydney appealed from the judgment of the Supreme Court of Nova Scotia *in banco* (18 M.P.R. 20) dismissing its appeal from the judgment of Graham J. (*ibid*) restraining it from proceeding with the advertised sale for arrears of taxes, or at any future time selling or attempting to sell for taxes, certain land which adjoined land of respondent, and declaring that the land in question was a public way and not assessable. A motion was made to quash the appeal to this Court for want of jurisdiction. The taxes to which the proceeds of the advertised sale could be applied did not exceed \$1,500. The value of the land in question, was assumed to be \$7,200.

*Held:* The appeal should be quashed for want of jurisdiction, as “the amount or value of the matter in controversy” in the appeal did not exceed \$2,000, within s. 39 (a) of the *Supreme Court Act* (R.S.C. 1927, c. 35). The “matter in controversy” was the right of the City to collect \$1,500 of taxes through the sale of property. As to “the amount or value”, it is the interest of the appellant that must be considered (*Kinghorn v. Larue*, 22 S.C.R. 347, at 349); and this was

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\*PRESENT:—Rinfret C.J. and Kerwin, Taschereau, Rand and Kellock, JJ.

1944  
 CITY OF  
 SYDNEY  
 v.  
 WRIGHT.

clearly the taxes; and their amount was the measure of value which determined the jurisdiction (*Gendron v. McDougall*, *Cassels' Digest*, 2nd Ed., p. 429, cited). (Special leave to appellant to appeal to this Court was refused).

MOTION to quash an appeal brought by the defendant, the City of Sydney, from the judgment of the Supreme Court of Nova Scotia *in banco* (1) dismissing its appeal from the judgment of Graham J. (2) restraining it from proceeding with the advertised sale for arrears of taxes, or at any future time selling or attempting to sell for taxes, a certain piece of land which adjoined land of the plaintiff, and declaring that the land in question was a public way and not assessable. At the opening of the hearing of the appeal in this Court, counsel for the respondent moved that the appeal be quashed for want of jurisdiction, on the ground that the amount or value of the matter in controversy in the appeal did not exceed \$2,000. Counsel for the appellant opposed the motion, but asked, if necessary, for special leave to appeal (leave was refused by the Supreme Court of Nova Scotia *in banco*). This Court reserved judgment on the motions, and heard the appeal. In the judgment now reported, this Court, dealing only with the motions, quashed the appeal, and refused special leave to appeal.

*E. H. Charleson* and *B. B. Jordan* for the appellant.

*G. F. Henderson* for the respondent.

The judgment of the Court was delivered by

RAND J.—When this appeal was called, a motion to dismiss for want of jurisdiction was made by the respondent. The appeal was heard on the merits and judgment on the motion reserved.

The point of jurisdiction depends upon whether or not within section 39 (a) of the *Supreme Court Act* “the amount or value of the matter in controversy in the appeal exceeds the sum of \$2,000.” The action was brought for an injunction to restrain the City of Sydney from proceeding with a tax sale of a strip of land adjoining property owned

(1) 18 M.P.R. 20; [1944] 2  
 D.L.R. 133.

(2) 18 M.P.R. 20, at 20-26;  
 [1944] 2 D.L.R. 133, at  
 133-138.

by the respondent. The taxes to which the proceeds of the sale could be applied were not more than \$1,500. The land was assessed for \$7,200 and for the purposes of deciding the question raised I will assume that sum to be its value. Further relief claimed was a declaration that the strip had, by dedication, become a public highway. The Courts below upheld the plaintiff's contention.

1944  
 CITY OF  
 SYDNEY  
 v.  
 WRIGHT.  
 Rand J.

What, then, is the matter in controversy in this Court? It is the right of the City to collect \$1,500 of taxes through the sale of property. Then, as to "the amount or value", it is to the interest of the party appealing that we must look: Taschereau J., in *Kinghorn v. Larue* (1). What is that here? It is clearly the taxes, and their amount is the measure of value which determines the jurisdiction.

For that conclusion we are not without authority. The point is governed by *Gendron v. McDougall* (2). There the plaintiff had obtained a judgment for \$231 and in execution seized an immovable worth \$2,000. The defendant filed an opposition à *fin de distraire*, claiming the land seized to be his property. Gendron contested that opposition but it was maintained. He then appealed to this Court which, on a challenge to the jurisdiction, held that the value of his interest in the appeal was \$231 only. I see no difference in principle between that case and the present.

The appellant had applied to the Court of Appeal for special leave to bring the controversy to this Court but it was refused, and by consent the application was renewed before us. The case, however, is *sui generis* and is not, in my opinion, one in which special leave should be granted.

The appeal should be quashed with costs to the respondent of one motion.

*Appeal quashed, with costs to the respondent of a motion; the application for leave to appeal dismissed without costs.*

Solicitor for the appellant: *Finlay MacDonald.*

Solicitor for the respondent: *John MacNeil.*

(1) (1893) 22 S.C.R. 347, at 349.

(2) (1885) Cassels' Digest, 2nd Ed., p. 429.