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*May 2.

*June 24.

AMOS COWEN (PLAINTIFF).....APPELLANT;

VS.

JAMES S. EVANS (DEFENDANT).....RESPONDENT.

Appeal—Amount in controversy—R.S.C. ch. 135—54 & 55 *Vic. ch.* 25—*Costs.*

C. brought an action against E., claiming: 1. That a certain building contract should be rescinded; 2. $1,000 damages; 3. $545 for value of bricks in possession of E., but belonging to C. The judgment of the Superior Court dismissed C.'s claim for $1,000, but granted the other conclusions. On appeal to the Court of Queen's Bench by E., the action was dismissed in 1893.

C. then appealed to the Supreme Court.

Held, that the building for which the contract had been entered into, having been completed, there remained but the question of costs and the claim for $545 in dispute between the parties and that amount was not sufficient to give jurisdiction to the Supreme Court under R.S.C. ch. 135 sec. 29.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court.

The facts of the case are sufficiently stated in the head note and in the judgment of Mr. Justice Taschereau, hereinafter given.

Before the case was inscribed for hearing on the merits, R. C. Smith, for the respondent, moved to quash the appeal on the following grounds:—

1. Because the case is not appealable to this court;

2. Because the matter in controversy herein does not amount to the sum or value of two thousand dollars, nor does it involve the question of the validity of any legislative act or ordinance, nor relate to any fee of office, duty, rent, revenue or any sum of money pay-

*PRESENT:—Sir Henry Strong C.J., and Fournier, Taschereau, Gwynne and Sedgewick JJ.

able to Her Majesty, or to any title to lands or tenements, annual rents or such like matters or things where the rights in future might be bound;

3. Because no question is involved in the present appeal but one of costs;

4. Because appellant acquiesced in the judgment of the Superior Court herein, dismissing his claim for damages and did not appeal therefrom, and the judgment of the Court of Queen's Bench (appeal side) now appealed from, specially reserved to appellant all his rights in the bricks and building material taken by him to respondent's premises, or to their value, and there remains of appellant's original conclusions but the prayer to resiliate a contract of less than two thousand dollars;

5. Because appellant has no interest whatever in bringing the present appeal to demand the resiliation of said contract, the building in question having been completed more than five years ago, and the question of appellant's liability for breach of said contract not arising in this case, but being before this honourable court upon another appeal, to wit, in the case in which the present appellant is appellant, and the present respondent is respondent, wherein appellant was condemned by the judgment of the Court of Queen's Bench (appeal side) to pay to respondent the sum of eight hundred and eighty-two dollars damages, and the present appeal is unnecessary and useless, and involves only the question of costs,

Archibald Q.C. contra.

The judgment of the majority of the court was delivered by:

TASCHEREAU J.—The action was by Cowen against Evans, asking:—

1st. That a building contract for $1,900 be rescinded;

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2nd. $1,000 damages;

3rd. $545 for bricks.

The case was pending *en délibéré* in the Superior Court when the statute of 1891, 54 & 55 Vic. ch. 25, was sanctioned.

The judgment in the Superior Court was rendered December 5th, 1891, dismissing the claim for $1,000, but granting the two other conclusions.

The Court of Queen's Bench, in 1893, reversed the judgment of the Superior Court and dismissed the action.

The building, it is admitted, was completed over five years ago, so that there is no question now of annulling a contract which has ceased to exist. The only question is one of costs and the $545 for bricks, for which the judgment of Queen's Bench reserves appellant's recourse. *Fraser* v. *Tupper* (1), *Moir* v. *Corporation of Huntingdon* (2).

The $1,000 damages are not in question, as the judgment dismissing that claim in the Superior Court was acquiesced in by Cowen. Upon these facts the case is clearly not appealable under R.S.C. ch. 135.

GWYNNE J. dissented (3).

R. C. Smith for motion.

J. S. Archibald Q.C. contra.

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(1) Cassels's Digest 421. (2) 9 Can. S. C. R. 363.

(3) See p. 332.