

ALEXANDER R. GRIFFITH (DE- } APPELLANT;
FENDANT)..... }

1900
*May 8.

AND

ALFRED HARWOOD (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
LOWER CANADA, APPEAL SIDE.

*Appeal—Jurisdiction—Final judgment—Plea of prescription—Judgment
dismissing plea—Costs—R. S. U. c. 135, s. 24—Art. 2267 C. C.*

A judgment affirming dismissal of a plea of prescription when other pleas remain on the record is not a final judgment from which an appeal lies in the Supreme Court of Canada. *Hamel v. Hamel* (26 Can. S. C. R. 17), approved and followed.

An objection to the jurisdiction of the court should be taken at the earliest moment. If left until the case comes on for hearing and the appeal is quashed the respondent may be allowed costs of a motion only.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada, appeal side, affirming a judgment of the Superior Court, District of Montreal, which maintained a demurrer and dismissed a plea of prescription filed as one of the defences to the action.

On the case coming on for hearing, the court of its own motion suggested that the judgment appealed from was not a final judgment, and that there was no jurisdiction in the court to hear such an appeal.

* PRESENT :—Sir Henry Strong C.J. and Taschereau, Sedgewick, King and Girouard JJ.

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Atwater Q.C. and *Duclos* for the appellant, urged 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 following cases were cited in support of the view that the court had jurisdiction under the Supreme and Exchequer Courts Act, to entertain such an appeal, viz.: *Chevalier v. Cuvillier* (1); *Shaw v. St. Louis* (2); *Shields v. Peak* (3); *Morris v. London & Canadian Loan Co.* (4); *Baptist v. Baptist* (5); *Powell v. Waters* (6); *Standard Discount Co. v. La Grange* (7); *Salaman v. Warner* (8); *Baptist v. Baptist* (5); *Eastern Townships Bank v. Swan* (9), and art. 2267 C. C.

Ryan for the respondent was not called upon.

The judgment of the court was delivered by:

THE CHIEF JUSTICE: (Oral).—The appeal must be quashed. There are decisions similar to the present in cases in the Privy Council and in this court governing the case. The recent case of *Hamel v. Hamel* (10) seems in point.

As regards costs, the respondent ought to have moved to quash instead of leaving the question of jurisdiction to be raised on the argument; the costs will therefore be only those of a motion to quash.

Appeal quashed with costs.

Solicitors for the appellant: *Atwater & Duclos.*

Solicitors for the respondent: *McGibbon, Casgrain,
 Ryan & Mitchell.*

(1) 4 Can. S. C. R. 605.

(2) 8 Can. S. C. R. 385.

(3) 8 Can. S. C. R. 579.

(4) 19 Can. S. C. R. 434.

(5) 21 Can. S. C. R. 425.

(6) 28 Can. S. C. R. 133.

(7) 3 C. P. D. 67.

(8) [1891] 1 Q. B. 734.

(9) 29 Can. S. C. R. 193.

(10) 26 Can. S. C. R. 17.