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*May 31
June 14

CHRISTOPHER A. TONKS and HANNAH TONKS (*Defendants*) — APPELLANTS;

AND

HAZEL DOREEN REID and JOHN CAIRD REID (*Plaintiffs*) — RESPONDENTS;

AND

THE CORPORATION OF THE TOWNSHIP OF YORK (*Defendant by writ*).

MOTION TO QUASH

Appeals—Jurisdiction—Practice and procedure—Appeal to Supreme Court of Canada—Amount in controversy—Closure of street by municipality—Land not made available to adjoining owners—Land sold to nominee of Revee—Acquired and built upon by Reeve—Motion to quash—Supreme Court Act, R.S.C. 1952, c. 259, s. 36.

The Township of York closed a road and, instead of giving the owners of the properties adjoining the closed road the right to purchase the same, as provided for by the *Municipal Act*, sold it to a nominee of the defendant, who was a Reeve of the Township. The defendant paid $6,600 for the land and spent over $25,000 in building a house. The plaintiffs, as adjoining owners, instituted an action to set aside the sale and to quash the by-law purporting to approve it. The action was dismissed by the trial judge. This judgment was reversed by the Court of Appeal which declared that the by-law was invalid and that the transfer to the defendant should be set aside. The defendants appealed to this Court. The plaintiffs moved to quash on the ground that the amount of the matter in controversy in the appeal did not exceed $10,000 and that consequently there was no appeal under s. 36 of the *Supreme Court Act*.

Held: The motion to quash should be dismissed.

The amount or value of the matter in controversy in an appeal is the loss which the appellant will suffer if the judgment in appeal is upheld. In the present case the validity of the by-law was not all that was involved in this appeal, since the judgment under appeal deprived the defendants of their title. Consequently, if the appeal fails the defendants will have no title to a property on which they have expended over $30,000.

Appels—Juridiction—Procédure—Appel à la Cour suprême du Canada—Montant en litige—Fermeture d'un chemin par une municipalité—Terrain non mis à la disposition des propriétaires contigus—Terrain vendu à un prête-nom d'un conseiller municipal—Terrain acquis et construit par le conseiller—Demande pour faire rejeter l'appel—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 36.

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*PRESENT: Cartwright, Martland, Judson, Ritchie and Spence JJ.

La municipalité de York a ordonné la fermeture d'un chemin et, au lieu de donner aux propriétaires des terrains contigus à la route fermée le droit de l'acquérir, tel que prévu par le droit municipal, l'a vendu à un prête-nom du défendeur, qui était président du Conseil de la municipalité. Le défendeur a payé $6,600 pour le terrain et en a dépensé $25,000 pour y construire une maison. Les demandeurs, propriétaires contigus, instituèrent une action pour faire mettre de côté la vente et pour faire annuler le règlement l'approuvant. L'action fut rejetée par le juge au procès. Ce jugement fut renversé par la Cour d'Appel qui déclara que le règlement était invalide et que le transfert de la propriété au défendeur devait être mis de côté. Le défendeur porta appel devant cette Cour. Les demandeurs présentèrent une requête pour faire rejeter l'appel pour le motif que le montant de la matière en litige dans l'appel ne dépassait pas $10,000 et que, par conséquent, il n'y avait pas d'appel en vertu de l'art. 36 de la *Loi sur la Cour suprême.*

Arrêt: La requête pour rejet d'appel doit être rejetée.

Le montant ou la valeur de la matière en litige dans un appel est la perte que l'appelant souffrira si le jugement dont est appel est maintenu. Dans l'espèce, ce n'était pas seulement la validité du règlement qui était en jeu puisque le jugement dont est appel dépossédait les défendeurs de leur titre. En conséquence, si l'appel est rejeté, les défendeurs n'auront aucun titre à cette propriété sur laquelle ils ont dépensé au-delà de $30,000.

DEMANDE pour faire rejeter un appel pour défaut de juridiction. Demande rejetée.

APPLICATION to quash an appeal for lack of jurisdiction. Application dismissed.

B. Crane, for the motion.

H. E. Manning, Q.C., contra.

D. Diplock, Q.C., for the Township.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is a motion to quash the appeal on the ground that the amount or value of the matter in controversy in the appeal does not exceed $10,000 and that consequently no appeal lies under s. 36 of the *Supreme Court Act.*

The action commenced by the respondents Hazel Doreen Reid and John Caird Reid arises out of the following facts. The respondents were the owners of a property which was bounded on one side by Myra Road in the Township of York. The Township decided to close the road and under the terms of the *Municipal Act* on doing so was under an obligation to give to the owners of the properties adjoining

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the closed road the right to purchase the same. Instead of offering the property as required the Township sold it to a prête-nom of the appellant Christopher Tonks who is the Reeve of the Township. Tonks paid $6,600 for the land and has since spent over $25,000 in building a house on it.

The prayer for relief in the statement of claim asks inter alia:

(*a*) a mandamus requiring the council of the defendant Corporation to fix the price at which the lands described in paragraph 5 hereof are to be sold, which lands comprised a highway which was legally stopped-up;

(*b*) a declaration that the plaintiff Hazel Doreen Reid as the owner of the land which abuts on the lands therein described has the right to purchase the soil and freehold of the lands therein described for the sum of $6,600.00 or at the price fixed as aforesaid or, in the alternative of the Westerly half of the said lands for the sum of $3,300.00 or at one-half of the price fixed as aforesaid;

(*c*) an order quashing section 2 of by-law number 15649 purported to have been passed by the Council of the defendant Corporation on the ground that the same is ultra vires and in contravention of the provisions of Sections 36 and 477 of the Municipal Act being Revised Statutes of Ontario 1960, Chapter 249 and setting aside all and any deeds executed or delivered or purported so to be by the defendant Corporation in pursuance thereof;

(*d*) an order setting aside the purported sale of the lands described in paragraph 5 hereof and any by-law insofar as it purports to approve, ratify and confirm such purported sale of the lands described in paragraph 5 hereof and the authorization of the execution and delivery by the reeve and clerk of the defendant Corporation of a deed purporting to convey the lands therein described to the said Marie Eunice Froman;

(*e*) an order setting aside and declaring null and void the deed from Mary Eunice Froman to the defendants Christopher A. Tonks and Anna Tonks;

The action was defended by the Tonks and by the Township who asked that it be dismissed with costs. The action was tried by King J. without a jury and was dismissed without costs. On appeal to the Court of Appeal the appeal was allowed and it was declared that the by-law of the Township in so far as it approved the sale of the land in question is invalid and should be set aside and that the deed to the prête-nom of the Tonks and the deed from such prête-nom to the Tonks are null and void and should be set aside.

The appeal seeks to restore the judgment at the trial.

If the appeal succeeds the result will be that the Tonks are the owners of the land and the building upon it. If the appeal fails the result is that they have no title to this land. It seems to me that under these circumstances the amount in controversy in the appeal is the value of the land and building which exceeds $30,000.

It is said on behalf of the respondents that all that is really involved is the validity of the by-law but I cannot accept this argument. The judgment in appeal expressly declares the conveyance to the Tonks void and deprives them of their title.

It was submitted on behalf of the respondents that although the appellants are deprived of their title they would have a right to claim a lien on the lands for the money they have expended. Even if this were so I doubt whether it would be relevant; but it seems clear that if the judgment of the Court of Appeal stands the Tonks would have no such right. The judgment proceeds on the basis that Tonks was acting fraudulently throughout and if that be so he could not be said to have been acting under a bona fide mistake of title when he made the improvements.

Since the case of *Orpen v. Roberts*[1], it has been settled that the amount or value of the matter in controversy is the loss which the appellant will suffer if the judgment in appeal is up-held—see *Fallis v. United Fuel Investments Limited*[2], where it was said in the unanimous judgment of the Court:

> In my opinion the test to be applied in determining whether there is an amount involved in the proposed appeal exceeding $2000 is that set out in the judgment of this Court in *Orpen v. Roberts et al,* upholding the judgment of the Registrar affrming jurisdiction. The action was for an injunction to restrain the defendant from erecting a building nearer to the street line than 25 feet and to restrain the municipality from granting a permit for the erection of the proposed building. The report at page 367 reads as follows:
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> > The Court said the subject matter of the appeal is the right of the respondent to build on the street line on Carlton street in the city of Toronto. "The amount or value of the matter in controversy" (section 40) is the loss which the granting or refusal of that right would entail. The evidence sufficiently shows that the loss—and therefore the amount or value in controversy—exceeds $2,000.
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> Applying this test to the facts of the case at bar, the evidence shows that if the winding-up proceeds the appellant Fallis will suffer a loss greatly in excess of $2000.

[1] [1925] S.C.R. 364, 1 D.L.R. 1101.

[2] [1962] S.C.R. 771 at 774, 34 D.L.R. (2d) 175.

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In the case at bar if the appeal fails the appellants will have lost a property on which they have expended over $30,000, of which property under the judgment at the trial they were held to be the owners.

I would dismiss the motion with costs.

Application dismissed with costs.

Solicitors for the defendants, appellants: Smart & Biggar, Ottawa.

Solicitors for the plaintiffs, respondents: Gowling, MacTavish, Osborne & Henderson, Ottawa.

Solicitors for the Township of York: Honeywell, Baker, Gibson, Witherspoon, Lawrence & Diplock, Ottawa.