1880 REUBEN LEVI.....APPELLANT;

*Nov. 8.

AND

1881 JAMES REED.....RESPONDENT.

*Feb'y. 11.

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

Jurisdiction—Appeal, Right of—Slander—Damages, Special and vindictive—Appeal as to quantum of damages.

L., appellant, sued *R.*, the respondent, before the Superior Court at *Arthabaska*, in an action of damages (laid at $10,000) for verbal slander. The judgment of the Superior Court awarded to the

*PRESENT—Sir W. J. Ritchie, Kt., C. J., and Fournier, Henry, Taschereau and Gwynne, J.J.

appellant a sum of $1,000 for special and vindictive damages. *R.* appealed to the Court of Queen's Bench (appeal side), and *L.*, the present appellant, did not ask, by way of cross appeal, for an increase of damages, but contended that the judgment for $1,000 should be confirmed. The Court of Queen's Bench partly concurred in the judgment of the Superior Court, but differed as to the amount, because *L.* had not proved special damages, and the amount awarded was reduced to $500, and costs of appeal were given against the present appellant. *L.* there upon appealed to the Supreme Court.

Held,—(*Taschereau*, J., dissenting)—1. That *L.*, the plaintiff, although respondent in the court below, and not seeking in that court by way of cross-appeal an increase of damages beyond the $1,000, was entitled to appeal, for in determining the amount of the matter in controversy between the parties, the proper course was to look at the amount for which the declaration concluded, and not at the amount of the judgment. *Joyce* v. *Hart* (1) reviewed and approved.

2. In an action of damages, if the amount awarded in the Court of first instance is not such as to shock the sense of justice and to make it apparent that there was error or partiality on the part of the judge (the exercise of a discretion on his part being in the nature of the case required) an appellate court will not interfere with the discretion such judge has exercised in determining the amount of damages.

APPEAL from a judgment of the Court of Queen's Bench, rendered at *Quebec*, in an action of damages for slander, originally instituted at *Arthabaskaville* by the appellant, and praying for a condemnation of ten thousand dollars against the respondent. By such judgment the damages awarded by the Superior Court at *Arthabaska* were reduced from one thousand dollars to five hundred dollars, and the costs of both parties in the Court of Queen's Bench were awarded against the appellant.

This was an action by one medical practitioner against another for damages for slander.

The defences to the action were: the general issue; that defendant was not injured and received no damage;

(1) 1 Can. S. C. R. 321.

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compensation of injuries; and privileged communications.

The accusations particularly insisted on by appellant were imputations of his ignorance; that he was not a good doctor; that he killed people by the medicine he gave them; malpractice; that he attended people he could do no good to in order to make a bill; and that he was mad.

The evidence is sufficiently referred to in the judgments hereinafter given. On the argument it was admitted that the respondent had made use towards the appellant of language which was not justified nor privileged by the occasion. The principal questions on this appeal were, whether the Court of Appeal was justified in reducing the damages from $1,000 to $500, and 2nd, whether the case was appealable to the Supreme Court.

On the latter point, Mr. *Laurier*, Q. C., argued that the judgment appealed from to the Court of Queen's Bench was for $1,000, and that the present appellant, not having taken out a cross appeal, had acquiesced in the judgment, thereby reducing the matter in dispute between the parties to a sum less than $2,000, and therefore the present appellant had debarred himself of the jurisdiction of this court. See *Sirey* code annoté de Proc (1).

Mr. *Irvine*, Q.C, relied on the case of *Joyce* v. *Hart* (2) in which this court had reviewed all the decisions and had laid down the rule that it was the amount claimed by the declaration which was the amount in dispute.

The case was then heard on the merits.

Mr. *Irvine*, Q.C., and Mr. *Gibsone* for appellant:

The question here is whether this is a case in which the Court of Queen's Bench ought to have disturbed the judgment of the court of original jurisdiction. The

(1) Art. 453, p. 290, Par. 1, No. 7. (2) 1 Can. S. C. R. 321.

only reasons given for reducing the amount were first, because the court considered that appellant had not proved that he suffered any amount of special damages, and that the respondent had been subjected to a much larger amount of costs by the adduction on the part of the appellant of illegal evidence. Now, the principle of reducing the amount of damages because certain costs ought to have been adjudicated against appellant is very erroneous; it would have been more proper to have charged us with the costs of certain witnesses. However, I contend that the judgment of the Superior Court ought not to have been disturbed on that ground.

In this case the defendant pleaded the truth of what he had said. When he gave his evidence, he was permitted by the court to answer fully, and in such a manner as to impress upon the public the truth of his slanders; in fact, after hearing the evidence of Dr. *Reed*, it must have been almost universally believed that his charges against Dr. *Levi* were true, inasmuch as it could not be presumed that Dr. *Reed* was guilty of perjury. Had the medical testimony not been taken, the position of matters would have stood thus: Dr. *Reed* did state him to be a poisoner, and he was a poisoner (and so on as regard the other accusations), but Dr. *Reed* had no right to make these statements, and therefore we condemn him; thus if we reject the medical testimony, the appellant will suffer a greater injury to his reputation than the one he was complaining of.

The next ground was, that there was no proof of special damage. Now, I hold it is only necessary for us to prove that a loss to him was the result, and there is evidence that certain parties refused to employ him on account of these reports. It is contended, on the other side, that the appellant's practice increased. But suppose it did increase, is it to be said that it would

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not have increased more if he had not been injured? Although no actual amount can be shown, yet, as sworn to by some of the medical gentlemen, "the damage that would be done to Dr. *Levi* would be serious." "The damage is serious."

Although it must be evident from the citations made that the actual damage done the appellant in the practice of his profession must have been and still is very great, let it be assumed, for the sake of argument, that no actual damage was proved, and that the appellant was entitled only to what is kown to our law as "*dommages vindictifs*," retributive or exemplary damages. In such case it will be seen that the amount awarded was by no means excessive. Our law differs from the law of *England*, and awards damages without proof of damages to punish the moral wrong, and as a solatium for the mental suffering to the person whose sense of honor has been justly offended.

It is also specially to be borne in mind that defamation in our law is considered an offence which is destructive of society and one which specially should be punished with heavy damages; thus it is laid down by *Darreau's* Traites des injures (1).

Our own courts have decided that exemplary damages will be given without proof of actual damage and that the court will assess the exemplary damages, thus carrying out the doctrine of our law which leaves the case *à l'arbitrage du juge*. *Stephen's* Digest Vo. Damages (2).

Why it has been thought proper to disturb the judgment of the judge in the court below, to whose arbitrament the case is by law left, is difficult to ascertain, especially as that judge was personally present when the witnesses for the plaintiff were heard.

In estimating the damages the court took into con-

(1) Vol. I., p. 8, 1st. sec.; Vol. II., p. 425.

(2) Page 378, Nos. 55, 56, 57.

sideration the respective conditions of the parties. The appellant was a young man who had graduated with honors at *McGill*, and had only been 18 months in practice.

With respect to the respondent, his reputation was that of a clever doctor, with 27 years experience in the practice of his profession—a successful practitioner, a man of great wealth, possessing considerable influence in the community, having enjoyed all possible municipal honors as warden of the county, mayor, &c., and having great influence also through large investments of moneys in the county in question.

Mr. *Laurier*, Q.C., for respondent:

There is no question of law in issue between the parties. The only question upon which this court would be called upon to adjudicate, would be as to whether the evidence warrants the conclusion arrived at by the Court of Appeal, or the conclusion arrived at by the Superior Court in the first instance.

It is contended that Courts of Appeal are not justified in disturbing the judgment of the court of original jurisdiction unless there has been some gross error. If this ruling be not adopted, it would be disturbing the whole course of our jurisprudence.

In the province of *Quebec*, where, in the courts of first instance, the judge acts both as judge and jury, Courts of Appeal are *ex necessitate* compelled to review questions of fact as well as questions of law, but it may well be asked whether such a duty was one contemplated to be devolved upon the Supreme Court of *Canada*. It may well be asked whether it would be conducive to the public weal, that the Supreme Court should in purely civil cases undertake to scan and scrutinize the evidence, and to review facts already reviewed by a court of appeal. It would seem, on the

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contrary, that questions of fact settled by Courts of Appeal are no more debatable before the Supreme Court, and that the mission of the Supreme Court in such cases should rest on the high ground of the law, and upon no other. In the Court of Appeal I argued that there was no evidence of special damages and no actual loss had been suffered. This was the main point upon which the two courts differed. The Superior Court allowed the large sum of $1,000 for "special and vindictive damages."

On the other hand, the Court of Appeal expressly avers in its judgment, that no special damages have been proved, and diminishes accordingly the amount of damages granted by the Superior Court. Upon this point, the respondent confidently submits that the evidence warrants, without any possibility of cavil, the view adopted by the Court of Appeal: no proof whatever has been made of special damages.

Another reason given by the Court of Appeal to reduce the amount granted by the Superior Court, was the large amount of useless costs made by the appellant, in examining witnesses who should never have been examined, with the hope that perhaps he might find out that the respondent had, in some private and intimate conversation, blackened his character.

The appellant entered also into another kind of evidence still more illegal and irrelevant. The declaration complained that the respondent had attacked both the honesty and skill of the appellant as a physician. Instead of proving that language which he thought slanderous, and resting his case there, and thus putting the respondent on his defence, the appellant chose to bring medical evidence, at great cost, in order to prove the *rationale* of his treatments.

As the whole expense of this irrelevant and illegal evidence had to be borne by the respondent, the amount

allowed by the original judgment was reduced accordingly by the judgment of the Court of Appeal.

But it was urged in the court below that the respondent had shown great malice, that he was a wealthy man, and that the amount of $1,000 for vindictive damages alone, was not excessive. The Court of Appeal —Mr. Justice *Ramsay* dissenting—was of a different opinion.

[The learned counsel then reviewed the evidence, and contended that an examination of the case would fully support the view taken by the Court of Appeal.]

RITCHIE, C.J.:—

[After stating the facts of the case proceeded as follows:]

I do not know that in the whole course of my judicial experience I ever knew of a man who has been so persistently pursued by such slanderous, scandalous and malicious statements as was the appellant in this case, and certainly I have never heard of a brother practitioner trying to obstruct the success of a young man, who has just been admitted to practice, by such conduct as that with which the respondent in this case is charged.

It is alleged in the declaration, and the allegations have been fully sustained by the evidence, that the respondent

On the 4th September, 1877, at the court house at *Inverness*, in the presence of persons esteemed by the appellant, did publish and say, falsely and maliciously, of the appellant: 'You are a murderer.' 'You asked me to murder that woman.' Dr. *Levi* is the most ignorant man in the profession.'

And again, that at *Inverness*, about the same time, in the presence of witnesses, respondent said:

Dr. *Levi* was attending *Marley Lambly* for his eye, he was doing the boy no good, he would have blinded him. Dr. *Levi* went to attend a little boy of Mr. *Ross's* after I gave the boy up, he knew he could do him no good, his object was to extort money from the boy's father, knowing Mr. *Ross* was a rich man.————I and another

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doctor were attending Mrs. *Cox* and we gave her up, but Dr. *Levi* was sent for and he said he could cure her, and, after the first dose of medicine Dr. *Levi* gave her, the woman died.————I have twice met Dr. *Levi* in consultations, and on both occasions Dr. *Levi* was wrong, but he would not confess it.————Dr. *Levi* is wrong in every case he attends, and mostly all his patients die after the first dose of medicine he gives them.

That on the 15th September, A.D. 1877, respondent said at *Inverness*, in presence of witnesses: If you want a doctor you should send for Dr. *Shee*, as Dr. *Levi* is no doctor. Dr. *Levi* poisoned *Robert Reinhardt*, and Dr. *Hume* can prove it.

The declaration further alleges that in or about the 20th September, A.D., 1876, the respondent, speaking to one *John Cox*, said:

If Dr. *Levi* was allowed to do what he wanted to do, your wife would have been dead and Dr. *Levi* would have been arrested and put in jail.

And on another occasion, speaking to appellant's patients, respondent said:

If Dr. *Levi* had been allowed to do what he wanted to do in the case of Mrs. *John Cox* she and her child would have been dead, and Dr. *Levi* would have been hanged.————Dr. *Levi* poisoned *Robert Reinhardt*. Dr. *Levi* is sometimes out of his mind and mad.

Then what do we find? That when the trial is going on this gentleman is put into the witness stand and persists in his denunciations. However, fortunately for the appellant, medical gentlemen from *McGill College* came down from *Montreal* to justify the appellant's treatment of his patients, and with their evidence the appellant's character has been entirely vindicated, and it was proved that he was a worthy member of his profession.

Now, the learned Judge who had tried this case, and had considered all the circumstances, came to the conclusion that there was not the slightest excuse for inducing the respondent to have shown towards the appellant such persistent hostility.

The Superior Court gave as its *considérants:*

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The principal *considérant* of the judgment of the Superior Court, was expressed as follows: The facts reproached to the defendant are proved. With the view of injuring the plaintiff in the practice of his profession, he seems to have missed no occasion of giving him the worst possible reputation as a physician. His persistence in that respect has been remarkable, and was manifested in the most insulting manner, even in the evidence which he was called upon to give in this cause. The defendant has not proved any provocation on the part of the plaintiff, and I have sought in vain for a justification of the language which he has made use of * * * * The plaintiff had therefore good reason to institute the present action. That the false and malicious accusations proffered against him must have deeply wounded him, and must have caused him damage in the exercise of his profession, and in his pecuniary interests (*intérêts matériels*), is self evident.

The judgment of the Court of Appeal partly concurred in the judgment of the Superior Court, but differed as to the amount of damages to be awarded, on the ground that no special damages had been proved. This is a mistake, because in the record I find that there is one instance, at any rate, in which appellant has clearly proved *actual damage*. A Mrs. *Rolston*, who was desirous of seeing a physician, was told that she had better go to Dr. *Levi*, as Dr. *Reed* was not coming. What does she answer?—"I do not like to go to Dr. *Levi*, some bad reports are going about him, he gives wrong medicine, I would rather wait." Then again we find in the evidence Mr. *Patrick Browne*, who says:

> Most decidedly I was prevented from employing Dr. *Levi*, on account of these reports. I would not employ him after the reports I heard on any account, on no condition would I employ him.

Under such circumstances I have no hesitation in saying that the judge gave moderate damages, and I would have given probably more. Where reputation was to be for weal or for woe, and you find a man, having twenty-seven years experience in the practice of his profession, and who has acquired a high reputation for

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ability and learning, without proving any provocation whatsoever, undertaking to ruin professionally a young man by malicious and unfounded accusations, I think the sum of $1,000 is very moderate, and I cannot see on what principle the amount was reduced by the court below, especially when by the judgment the apellant was condemned to pay the costs of the appeal. I think appellant got no more than what he was justly entitled to, and here also I think, as in the case of *Gingras* v. *Desilets*, that the cases of *Lambin* v. *South Eastern Railway Company* (1), and *Ball* v. *Ray* (2), are apposite to the one now before us, and therefore that the judgment of the Superior Court should be reinstated.

FOURNIER, J. :—

L'appelant a poursuivi l'intimé devant la Cour Supérieure à *Arthabaska*, pour la somme de $10,000 de dommages pour diffamation. Le jugement de cette cour lui en a accordé $1,000 pour dommages *spéciaux et vindictifs*. Le présent intimé *Reed*, trouvant cette condamnation excessive, en a interjeté appel devant la Cour du Banc de la Reine, qui a adopté cette manière de voir et réduit la condamnation à $500 avec les frais d'appel contre *Levi*. Ce dernier se trouvant lésé à son tour par ce jugement qui, non-seulement le prive de la moitié de la somme accordée par la cour de première instance, mais qui par la condamnation aux dépens d'appel a encore l'effet d'absorber la somme de $500, que cette cour considérait comme une compensation suffisante des injures dont il se plaignait, en a appelé à cette cour. Les deux premières cours ont été d'accord à reconnaître que l'appelant *Levi* avait été victime d'une diffamation de la plus haute gravité. Cependant, sans le présent appel, le résultat de son recours à la justice, serait de sortir de cour calomnié et puni par l'obliga-

(1) 5 App. Cas. 361. (2) 30 L.T. N. S. 1.

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tion de payer une certaine somme pour frais excédant le montant qui lui a été accordé par la Cour du Banc de la Reine. Sous les circonstances de cette cause l'appelant mérite-t-il de subir la déplorable situation qui lui est faite ?

Avant de répondre à cette question, je suis obligé de faire quelques observations sur l'objection que l'Intimé soulève à la juridiction de cette cour. C'est la question sans cesse renouvelée de savoir si le droit d'appel, dans un cas comme celui-ci, doit être réglé par le montant de la demande ou par le montant du jugement. Je n'entends pas discuter cette question, car je la considère comme réglée par le jugement dans la cause de *Joyce* vs. *Hart* (1). La règle adoptée par cette cour est conforme à la section 25 du ch. 78 des statuts refondus B.C., et à la jurisprudence adoptée en dernier lieu par les tribunaux de la province de *Québec*, après plusieurs décisions en sens inverse sur cette même question. Les termes de l'acte de la Cour Suprême et d'Echiquier donnant l'appel à cette cour étant les mêmes que ceux qui donnent l'appel dans la province de *Québec*, cette cour a cru devoir adopter la jurisprudence des tribunaux de *Québec* pour interpréter cette clause de notre acte. Conformément à la décision dans la cause de *Joyce* vs. *Hart*, c'est le montant de la demande et non celui de la condamnation qui doit servir à déterminer le droit d'appel. Dans la présente cause le montant de la demande est de $10,000,—quoique le jugement de la Cour du Banc de la Reine ne soit que de $500. Conformément à cette décision, je suis d'avis qu'il y a appel de ce jugement à cette cour.

Je n'ai trouvé nulle part dans le *cas spécial* qui nous est soumis, la preuve d'un acquiescement au jugement. Il faut remarquer que nous devons décider cette cause telle qu'elle nous est soumise du consentement

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des deux parties. Il est certain que si la cause n'était pas appelable leur consentement ne donnerait pas à cette cour le droit d'entretenir l'appel; mais il est évident qu'elle l'est d'après le montant de la demande

Je crois devoir citer en entier le consentement qui forme le *cas spécial* qui nous est soumis.

CONSENT.

The parties consent and agree to the statement of special case hereto annexed, consisting of the Declaration, the Pleas, the depositions of the witnesses examined by both parties, except those of William Edwards, John Gorman, William Lowry, James Bracken, James McCammon, Mary Ann Henderson (Mrs. Rolston) and Thomas Armstrong, together with the documents connected with said depositions. The petition by plaintiff in court below for transmission of record to Montreal with affidavits and judgment thereon. Motion for transmission of record to Montreal affidavit and judgment thereon. The judgment of the Superior Court given at Arthabaskaville. The judgment of the Court of Queen's Bench, (appeal side) rendered at Quebec, on the fifth day of June instant. The parties also consent that the exhibits produced by the Appellant in the Superior Court, being a pamphlet written by Dr. Hingston, a communication from the Medical Faculty of McGill College, and a Registrar's certificate, be transmitted to the Supreme Court of Canada as forming part of the said special case.

Quebec, 30th June 1880.

SEWELL GIBSONE & AYLWIN,
Attys. for Appellant.
LAURIER & LAVERGNE,
Attys. for Respondent.

On voit par ce consentement que la déclaration du demandeur *Levi* en forme partie. En y référant on voit qu'elle conclut au paiement d'une somme de $10,000, de dommages. Aucun des autres documents qui y sont énumérés ne font voir qu'il y a eu acquiescement au jugement accordant $500. La juridiction de cette cour apparaissant clairement par le dossier fait en vertu du consentement ci-dessus cité, je suis en conséquence d'avis que l'on doit procéder à rendre le jugement sur le mérite de la cause.

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Sous ce rapport il ne saurait y avoir de difficulté. Les deux cours appelées à juger cette cause ont été d'accord que le présent intimé *Reed* devait être condamné pour les faits diffamatoires qui lui sont imputés. Elles n'ont différé d'opinion que quant au montant, l'une a accordé $1,000, et l'autre trouvant le montant trop élevé l'a réduit à $500. En référant à ces deux jugements on voit que la cour ne soulève aucune question de droit. La seule question que nous avons à considérer est de savoir si la preuve est suffisante pour justifier la condamnation de la Cour Supérieure, ou celle de la Cour du Banc de la Reine.

L'appréciation des dommages et intérêts est une des questions les plus difficiles et les plus délicates de notre droit.

Il n'est pas, dit *Duranton* (1), de matière plus abstraite que celle relative aux dommages et intérêts ; aussi la loi n'a-t-elle pu tracer que des principes généraux, en s'en remettant à la sagesse des tribunaux pour leur application, selon les circonstances et les faits de la cause.

Il n'y a donc en semblable matière aucunes règles précises qui puissent servir à guider le juge dans la détermination du montant des dommages réclamés, et conséquemment pas de risque de violer la loi en fixant un montant plutôt qu'un autre. Comme le dit *Laurent*, l'arbitraire est ici dans la nature des choses.

Il est vrai qu'il est impossible d'évaluer en argent le dommage moral, le montant des dommages-intérêts sera donc toujours arbitraire : est-ce 1,000 francs, est-ce 10,000 francs. Et pourquoi 10,000 plutôt que 9,000 ? on ne le sait ; mais qu'importe ? De ce que le juge ne peut pas accorder une réparation, on ne peut pas conclure qu'il ne doit accorder aucune réparation. L'arbitraire est ici dans la nature des choses et il peut tourner à bien, parce qu'il permet au juge de prononcer des peines civiles sans limite aucune donc en les proportionnant à la gravité du tort moral (2).

L'étendue du dommage causé et le montant des dom-

(1) No. 480, vol. 10.

(2) Laurent, Vol. 20, p. 415, No. 395.

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mages et intérêts sont des questions de faits sur lesquelles les juges des trois cours qui ont été appelées à se prononcer sur cette cause ont exactement les mêmes pouvoirs souverains et arbitraires, d'en décider suivant leurs consciences. Il est de notre devoir de décider la question du montant des dommages et intérêts, comme c'était également le devoir de la Cour Supérieure et de la Cour du Banc de la Reine, suivant notre conscience. C'est surtout sur ces questions qu'on peut dire sans crainte de se tromper, "autant de têtes, autant d'opinions." Appréciant à notre manière les faits sur lesquels se sont déjà prononcées les Cours Supérieure et du Banc de la Reine, allons-nous déclarer que dans une chose si difficile à évaluer, elles se sont trompées toutes deux, et qu'un troisième chiffre fixé par nous arbitrairement comme les autres, est le véritable chiffre qu'elles aurait dû fixer comme on trouve la solution d'un problême d'arithmétique? A cette question je répondrai comme l'auteur cité ci-dessus, pourquoi $500, pourquoi $1,000, et pourquoi pas $2,000. La profonde méchanceté des calomnies répandues par l'intimé contre l'appelant lui méritait aussi bien une condamnation pour ce montant que pour l'un ou l'autre de ceux qui ont été prononcés? Fixerons-nous donc un troisième montant en conservant le pouvoir que nous avons d'arbitrer les dommages suivant notre conscience? Je ne suis pas de cet avis; si le montant accordé en première instance n'est pas de nature à blesser nos sentiments de justice, ne fait pas voir qu'il y ait erreur ou partialité de la part du juge, je crois que c'est notre devoir de l'adopter Il est de règle qu'un jugement de première instance ne peut être infirmé que lorsqu'il y a erreur évidente soit sur le fait soit sur le droit. Autrement la présomption légale est en faveur du jugement et il doit être maintenu.

Puisque dans le cas actuel la Cour du Banc de la

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Reine a reconnu, et que les parties l'admettent devant cette cour, qu'il n'y a dans le jugement de première instance, ni erreur de droit, ni erreur de fait, qu'il n'y a de différence entre les deux cours que sur l'appréciation des dommages laissée à leur arbitrage, n'est-ce pas le cas de faire application de la règle qu'aucune erreur n'étant démontrée, le jugement de première instance doit être confirmé.

Le juge de première instance, pour se déterminer à fixer le montant qu'il a adopté, a eu un avantage que n'ont pas eu les juges des deux autres cours. La plupart des témoins, et en particulier l'intimé, ont été examinés devant lui. Il a sans doute été influencé dans sa décision, comme d'ailleurs le fait voir son jugement par l'aggravation des injures répétées avec persistance devant la cour, en présence d'un nombreux public. Il avait droit de prendre ces faits en considération.

Bien qu'il y ait presque similitude entre le droit anglais et le droit de la province de *Québec*, sur les questions de dommages, je crois devoir m'abstenir de citer les décisions des tribunaux anglais—les principes du droit français devant ici recevoir leur application.

HENRY, J. :—

In conformity with the principles laid down in the previous case of *Gingras* v. *Desilets*, which are applicable to this, I think the appeal must be allowed as to the question of jurisdiction. In the case of *Joyce* v. *Hart* this court came to the conclusion that the amount of damages claimed in the writ of summons should be the criterion by which the appeal should be allowed. This court came to the conclusion—that in all cases in which the plaintiff would have a right of appeal, the defendant also would have the right of doing so. In this case it is said that because plaintiff was satisfied with $1,000 damages awarded to him by

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the court of first instance, he has lost all right of appeal, but this was not the amount in dispute between the parties, and carrying out the principle laid down in *Joyce* v. *Hart*, by which we are bound, we cannot entertain his objection.

As to the amount of damages awarded, I do not think there can ever be a case in which exemplary damages may be given, if this is not one. I entirely concur with the judge who tried the case, that appellant was entitled to both real and exemplary damages, and as it is a case where damages cannot be measured, I do not think we ought, under the circumstances, to disturb the judgment of first instance.

TASCHEREAU, J.:—

By sec. 5 of 42 *Vic.*, ch. 39, and the last words of sec. 8 thereof, there is no appeal in the province of *Quebec* but from the Court of Queen's Bench. Sec. 8 gives an appeal in *Quebec* cases, only in any action, suit, cause, matter or other judicial proceeding wherein the matter in controversy amounts to the sum or value of $2,000. Now, as appeals are given only from the Queen's Bench, it seems clear that the matter in controversy must be taken to be the matter in controversy "in the Queen's Bench."

Now, here, did the amount in controversy in the Queen's Bench amount to $2,000? Certainly not. Because *Levi*, the plaintiff, acquiesced in the judgment of the Superior Court, giving him $1,000; and *Reed*, the defendant, appealed to the Queen's Bench only to get relieved of this $1,000. The contestation in the Queen's Bench between the parties was then only on a matter of $1,000, and so is not appealable to this court.

And this is not contrary to *Joyce* v. *Hart* (1). For in *Joyce* v. *Hart*, the matter before the Queen's Bench did

(1) 1 Can. S. C. R. 321.

amount to $2,000. There the plaintiff's action for $2,000 had been dismissed in part by the court of original jurisdiction. He (the plaintiff) brought that judgment on appeal to the Queen's Bench, so that the Queen's Bench had before them a case wherein the matter in controversy amounted to $2,000, whilst here, it had before them only a $1,000 case.

Could it be contended that if a plaintiff by his declaration demands $2,000, and on the day of the return, or at any time during the progress of the case, fyles a retraxit for $1,000, the case would be appealable to this court? Then, all that a plaintiff has to do to bring even a one hundred dollars to this court is to add $1,900 to his demand and fyle at any time a retraxit for these $1,900. The jurisprudence of the province of *Quebec* on an analogous question cannot be invoked here, because there sec. 25 of ch. 77 of the Consolidated Statutes (C. S. L. C.) expressly enacts that "whenever the jurisdiction of the court, or the right to appeal from any judgment of any court, is dependent upon the amount in dispute, such amount shall be understood to be that demanded, and not that recovered, if they are different." This enactment does not rule the appeals to this court. In limiting the appeal to this court to the cases wherein the value of the matter in controversy amounts to $2,000, it seems to me that the intention of the parliament was that none but cases involving before this court an amount of $2,000 or more should be brought here; that the matter to be settled by this court should not be less than $2,000 in value; that the costs of an appeal to this court would be too large, if the matter to be determined by this court did not amount to $2,000. In this case, clearly, we have a matter in dispute amounting to $1,000 only. We, therefore, in my opinion, have no jurisdiction.

The majority of the court, however, is of opinion that

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the Supreme Court Acts do not require that the amount of the matter in controversy before this court should be of two thousand dollars, and that if the amount demanded by the declaration was $2,000, this alone gives jurisdiction to this court upon an appeal by the defendant, whatever reductions on that amount have been made in the court below by the plaintiff, and my opinion is overruled.

GWYNNE, J. :—

An objection was taken in this case that no appeal lies to this court for the reason that, although the plaintiff claimed in his declaration $10,000 damages, the sum of $1,000 was all that was awarded to him by the court of first instance, and that by the Act constituting this court it is enacted that no appeal shall be allowed from any judgment rendered in the province of *Quebec* in any case wherein the sum or value of the matter in dispute does not amount to two thousand dollars.

Whatever might be my opinion, if this point was now up for the first time, I am of opinion that it is concluded in favor of our jurisdiction by the judgment of this court in *Joyce* v. *Hart* (1). That there is a difference in the circumstances of this case from those upon which the point was raised in *Joyce* v. *Hart*, I am free to admit, but it is impossible not to perceive that the principle which in that case the court clearly enunciated and made the basis of their decision is equally applicable to this case as to that, notwithstanding the difference which exists between the circumstances of the two cases, and this court is equally bound by any principle of law clearly enunciated and laid down as the basis of the judgment of the court in a prior case, as it would be by the decision itself where the circumstances of the cases are identical. See the

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judgment of Lord Justice *Thesiger* in *Kaltenbach* v. *McKenzie* (1), and *Household Fire Insurance Co.* v. *Grant* (2). Whether in every case this court should for all time be bound by a judgment which may have enunciated a principle of law which, upon further consideration by the same judges, or by others constituting the court at a future time, might be thought to be erroneous, is not the question here. If that case should arise, I confess, I think, that nothing short of a thorough conviction that the principle laid down is erroneous, and that the interests of justice demand its reversal, would justify us in reversing it; but in a matter affecting the jurisdiction of the court, which depends solely upon the construction of the statute constituting it, if in the construing it there be any doubt, I think it is our duty, in the interest of justice, so to construe it as to support our jurisdiction; for by declining to exercise it, we might perhaps do most grievous wrong; and as the court has put such a construction upon the Act as maintains our jurisdiction, I think that construction should be sustained, unless the legislature shall interfere.

In this particular case, and I say it with the greatest deference and the most profound respect for the learned judges of the Court of Queen's Bench in the province of *Quebec*, from which court this appeal comes, I cannot but think that the appellant has most just grounds of appeal from the judgment pronounced by the majority of the court. With the reasons given for that judgment I find myself unable to concur. This is not a case in which the plaintiff, in order to recover, is required to show special damage; and for so very aggravated a wrong, so persistently repeated and attempted to be justified in such a manner as to aggravate the injury, I cannot conceive how the sum of $1,000 damages can be deemed to be excessive. So neither can

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I concur in the other reasons given for reducing the amount awarded by the judge of first instance, namely, that the defendant in the court below has been subjected to a much larger amount of costs than he should have been, by the adduction on the part of the plaintiff of illegal evidence.

The evidence here referred to was said to be the evidence of the medical gentleman called by the plaintiff to contradict the medical evidence which the defendant, on being examined by the plaintiff to prove the slanders complained of, took the opportunity of giving in his own favor. Such evidence was, in my judgment, not only quite legal evidence, but such as, under the circumstances, the plaintiff's counsel very naturally felt called upon to advise the plaintiff to give, and was very proper to be given. For my own part, I must say that I have great difficulty in prescribing a limit to the amount of damages proper to be awarded in so aggravated a case.

Appeal allowed with costs.

Attorneys for Appellant: *Sewell, Gibsone & Aylwin.*

Attorneys for Respondent: *Laurier & Lavergne.*