

MOISE MONETTE (PLAINTIFF).....APPELLANT ;

1889

AND

*Mar. 19.

PHILIZA LEFEBVRE, *et al.* (DEFEN- }
DANTS)..... } RESPONDENTS.

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

*Practice—Right of appeal (P.Q.)—Amount in controversy—Supreme and
Exchequer Courts Act, sec 29, construction of—Jurisdiction.*

Where the plaintiff has acquiesced in the judgment of the Court of first instance by not appealing from the same, the measure of value for determining his right of appeal under section 29 of the Supreme and Exchequer Courts Act, is the amount awarded by the said judgment of the court of first instance, and not the amount claimed by his declaration. (*Levi v. Reed*, 6 Can. S. C. R. 482, over-ruled ; *Allan v. Pratt*, 13 App. Cases 780, referred to as over-ruling *Joyce v. Hart*, 1 Can. S. C. R. 321.)

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

This was an action of damages for slander contained in certain resolutions adopted by defendants (respondents) as School Commissioners of the parish of St. Constant. The plaintiff (appellant) claimed by his declaration \$5,000 damages and prayed that the defendants be ordered to enter in the minute book of the School Commissioners the judgment in the cause, and that the same be read at the church door of St. Philippe two consecutive Sundays. The case was tried before a judge without a jury and the plaintiff was awarded \$200 damages. The defendants thereupon appealed to the Court of Queen's Bench (appeal side) and the

*PRESENT—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

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plaintiff did not file any cross-appeal, but contended that the judgment for \$200 should be affirmed. The Court of Queen's Bench, setting aside the judgment of the Superior Court, held that a retraction made by the defendants and a tender of \$40 for damages and the costs of an action of \$40 were sufficient, and dismissed the plaintiff's action for the surplus.

The plaintiff thereupon appealed to the Supreme Court of Canada.

Lacoste Q.C. and *Pagnuelo* Q.C. appeared on behalf of the appellant, and *Geoffrion* Q.C. and *Robidoux* on behalf of the respondents.

At the opening of the argument Taschereau J. raised an objection as to the jurisdiction of the court, the amount in controversy being under \$2,000.

Pagnuelo Q.C. argued that the jurisprudence of this court on this question had been settled by the decision of the court in *Joyce v. Hart* (1), viz., that in order to ascertain the sum or value of the matter in controversy the court should look to the conclusions of the declaration.

[STRONG J.—According to the decision of the court in *Joyce v. Hart* it seems to me that you have a right to be heard, but the recent decision of the Privy Council in *Allan v. Pratt* (2) has overruled *Joyce v. Hart*.]

[TASCHEREAU J.—You might have filed a cross-appeal in the Court of Queen's Bench, but you acquiesced in the judgment of the Superior Court, and the amount in dispute before the Court of Queen's Bench was \$200—nothing more.]

[FOURNIER J.—I am not prepared to say that appellant has renounced the right of claiming \$5,000 damages before this court. The whole case is open.]

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

(2) 13 App. Cas. 780.

Lacoste Q.C.—We have a right to have the resolution struck out of the registry.

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[STRONG J.—The judgment of the Superior Court is simply a condemnation to pay you \$200 damages and costs in this judgment You have acquiesced by not appealing against it.]

[TASCHEREAU J., Mr. Justice GWYNNE and Mr. Justice PATTERSON are also of opinion that we have no jurisdiction.]

STRONG J.—We are of opinion that the appeal should be quashed for want of jurisdiction, the sum or value of the matter in controversy being under \$2,000.

Appeal quashed without costs.

Solicitors for appellant: *Pagnuelo, Taillon, Bonin & Gouin.*

Solicitors for respondents: *Robidoux, Fortin & Rocher.*
