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*Nov. 10.

A. LEONIDAS HURTUBISE AND LA BANQUE JACQUES CARTIER } APPELLANTS;

AND

CHARLES DESMARTEAU (CURATOR)..RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER CANADA (IN REVIEW).

Supreme and Exchequer Courts Amending Act, 1891, 54-55 *Vic. ch.* 25 *s.* 3—*Appeal from Court of Review.*

By section 3 of the Supreme and Exchequer Courts Amending Act of 1891 an appeal may lie to the Supreme Court of Canada from the Superior Court in Review, Province of Quebec, in cases which by the law of that province are appealable direct to the Judicial Committee of the Privy Council.

A judgment was delivered by the Superior Court in Review at Montreal in favour of D., the respondent, on the same day on which the amending act came into force. On an appeal to the Supreme Court of Canada taken by H. *et al.*

Held, that the appellants not having shown that the judgment was delivered subsequent to the passing of the amending act the court had no jurisdiction.

Quere—Whether an appeal will lie from a judgment pronounced after the passing of the amending act in an action pending before the change of the law.

APPEAL from a judgment of the Superior Court for Lower Canada sitting in review.

On the 30th September, 1891, the Superior Court for Lower Canada sitting in review confirmed a judgment of the Supreme Court, dismissing the contestation by appellants of the sworn statement made by J. Durocher (insolvent) upon the abandonment of his property, and on the same day the Supreme and Exchequer Courts amending Act, 1891, was sanctioned. There was no evidence at what hour the judgment was delivered.

*PRESENT.—Sir W. J. Ritchie C.J. and Strong, Fournier, Taschereau and Patterson JJ.

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Geoffrion Q.C. for the respondent moved to quash the appeal on the ground that the statute passed during the last session of the Federal Parliament, amending the general act of the Supreme Court, could not apply in the present case, inasmuch as the said statute was only sanctioned after the judgment was rendered by the Court of Review, and because the said statute could not affect the present case, as the case was then pending and the act had no retroactive effect.

Charbonneau (*Brosseau* with him) opposed the motion.

The further ground was taken that the Supreme and Exchequer Courts Amending Act was *ultra vires* of the Dominion Parliament in so far as the provision in question was concerned, but the court having stated that this could not be argued unless the Attorney General for the Dominion was made a party counsel for respondent abandoned it.

Sir W. J. RITCHIE C.J.—I have no doubt that the judgment rendered in this case by the Court of Review is not appealable to this court. It was upon the appellant to show that the statute allowing appeals from judgments of the Court of Review was in force at the time this judgment was delivered. He has not shown this but quite the reverse, and therefore has not fulfilled the condition precedent to enable him to appeal. But even granting that the delivery of the judgment was simultaneous with the passing of the act I am of opinion that it would not give him the right of appeal. It is in vain to say that this is a question of procedure and not one of jurisdiction. It is purely a matter of jurisdiction of this court. We have nothing to do with the right of appeal to the Privy Council. Our jurisdiction depends upon the statute, and if the statute was not in force when the judgment was delivered it is quite clear there is no ap-

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peal. The motion will be allowed and the appeal quashed with costs.

STRONG J.—I agree and I should be of the same opinion even if the action had been pending at the time of the passing of the act and judgment had been delivered afterwards, and I rest my opinion on the decision of this court in the case of *Taylor* v. *The Queen* (1), and on the case of the *Attorney-General* v. *Sillem* (2) which was cited and relied on so much in the case of *The Queen* v. *Taylor* (1). It is true that I dissented in *The Queen* v. *Taylor* (1), but I am bound by the decision of the court.

The coincidence of the statute having been passed on the same day as the judgment was rendered leaves no doubt whatever in my mind. It was upon the party asserting that the case was subject to the new law, to show that the judgment was rendered after the passing of the act and was subject to its provisions, and this has not been done.

It is also well known that sometimes courts will look at fractions of a day in order that they shall not give statutory laws an *ex post facto* effect. That being so in the absence of any evidence to the contrary we are bound to hold that this judgment was rendered prior to and was an existing adjudication at the time of the passing of the statute.

FOURNIER J. concurred with Sir W. J. Ritchie C.J. that the appeal should be quashed.

TASCHEREAU J.—I am of the same opinion. I will not, and do not consider it necessary to, decide in this case whether an appeal would or would not lie even if the judgment in this case had been delivered subsequent to the passing of the statute. I will remark, however that in the case of *Hitchcock* v. *Way* (3), the

(1) 1 Can. S. C. R. 65. (2) 10 H. L. Cas. 730.
(3) 6 A. & E. 943.

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court there held that "where the law is altered by statute pending an action, the law as it existed when the action was commenced must decide the rights of the parties, unless the legislature, by the language used, shows a clear intention to vary the mutual relation of such parties." And in the case of *The Corporation of the City of Quebec* v. *Dunbar* (1), it was held that "a court of appeal called upon to review a judgment respecting a matter in relation to which there has been a subsequent declaratory law, will construe the old law and the declaratory law as one and the same enactment, and that the judgment appealed from, although anterior to the declaratory law, is affected by its provisions."

I do not wish to express any decided opinion upon this point, and I prefer to rest my opinion on the fact that in this case the judgment was not delivered subsequent to the passing of the new law.

PATTERSON J.—I base my opinion in this case entirely upon this one point that it rests upon the appellant to show that at the time of the pronouncing of the judgment this court had jurisdiction. I do not think the appellant in this case has succeeded in doing that. As to the other question whether an appeal would lie from a judgment pronounced after the passing of the amending act in an action pending before the change of the law, I express no opinion. That is a matter that would require serious consideration, and I prefer to rest my opinion upon the one ground that it is for the appellant to show that this court had jurisdiction when the judgment of the court below was pronounced.

Appeal quashed with costs.

Solicitors for motion : *Archambault & St. Louis.*

Solicitors *contra* : *N. Charboneau & Bisaillon, Brosseau & Lajoie.*

(1) 17 L. C. R. 6.