

1906
*Oct. 24.

THE NORTH SHORE POWER } APPELLANTS;
COMPANY (DEFENDANTS) }

AND

ALBERT DUGUAY, ET UXOR (PLAIN- } RESPONDENTS.
TIFFS) }

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN
REVIEW, AT QUEBEC.

Practice — Pleading — Amendment ordered by the court — Married women—Legal community—Right of action—Reprise d'instance Arts 78, 174, 176 C.P.Q.—R.S.C. c. 135, ss. 63, 64.

APPEAL from the judgment of the Superior Court, sitting in review, at Quebec, affirming the judgment of the Superior Court, which maintained the plaintiff's action with costs.

The action was instituted by Léocadie Vézina, widow of Napoléon Raymond, deceased, who died from injuries sustained, as alleged, from the neglect of the company to exercise proper care in respect to the development of electrical currents of high voltage in their power-house at Three Rivers, Que., and to provide adequate protection for their servants employed in connection with their works.

By the action, the widow claimed damages, as well on her own behalf as in her capacity of tutrix to her minor children, issue of her marriage with deceased. While the action was pending and before judgment on the merits, she was married a second time to Albert

*PRESENT:—Girouard, Davies, Idington, MacLennan and Duff JJ.

Duguay, one of the respondents, became common as to property with him under the law respecting legal community, and she and her second husband were subsequently appointed joint-tutors to the minor children. An admission was filed after this appeal had been inscribed for hearing in this court setting out these facts as follows :

1906
 NORTH
 SHORE
 POWER CO.
 v.
 DUGUAY.

Le dit Albert Duguay et la dite Dame Léocadie Vézina, la demanderesse personnellement pour la part réclamée par la demanderesse et en leur qualité de tuteurs conjoints aux dits enfants mineurs, ont dûment repris l'instance en cette affaire, et, par jugement de la cour supérieure en date du 20 novembre, 1905, ils ont été dûment autorisés à reprendre la dite instance et à la poursuivre d'après les derniers errements.

By the judgment of the Superior Court, the action was maintained and the defendants were adjudged and condemned to pay to the plaintiffs, personally, damages in the sum of \$300 for the female plaintiff personally, and in the sum of \$2,700 to the plaintiffs in their capacity of joint-tutors to the children. This judgment was affirmed by the court of review.

At the hearing of the appeal in the Supreme Court of Canada, an objection, not taken in the factum nor raised in the courts below, was for the first time urged by the appellants, that, upon her second marriage, the female plaintiff was deprived of her right of action for the recovery of the damages claimed by her personally, that in respect to this part of the action there had been no *reprise d'instance* in the name of her second husband and that, consequently, the judgment appealed from was invalid in so far as it awarded personal damages to her: *McFarran v. The Montreal Park & Island Railway Co.* (1), and arts. 78, 174 and 176 C.P.Q. were cited.

1906

NORTH
SHORE
POWER Co.v.
DUGUAY.

L. A. Taschereau K.C. for the appellants.
Lafleur K.C. for the respondents.

The judgment of the court was delivered by

GIROUARD J.—The papers filed upon the motion for *reprise d'instance* are not before us, but the judgments, both in the Superior Court and in the court of review, shew that the suit was pending there between the appellants and both Duguay and his wife.

The appeal is dismissed with costs for the reasons given in the courts below, the case involving only questions of fact, and the court, of its own motion, under the provisions of sections 63 and 64 of the Supreme and Exchequer Courts Act, orders that the record should be amended so as to shew that the amount of \$300 for which the judgment was rendered in the Superior Court is payable to both Duguay and his wife as *communs en biens*, from whom the appellants will get a full discharge when they satisfy the judgment.

Appeal dismissed with costs.

Solicitors for the appellants: *Tourigny & Bureau.*

Solicitors for the respondents: *Martel & Duplessis.*
