

LOUIS G. LAPOINTE PLAINTIFF)...APPELLANT ;

AND

THE MONTREAL POLICE BENE-
VOLENT AND PENSION SO- } RESPONDENTS.
CIETY (DEFENDANTS)..... }

1904
*May 6.
*May 16.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.

*Appeal—Jurisdiction—Life pension—Amount in controversy—Actuaries
tables.*

The action was for \$62.50, the first monthly instalment of a life pension, at the rate \$750 per annum claimed by the plaintiff, for a declaration that he was entitled to such annual pension from the society, payable by equal monthly instalments of \$62.50 each, during the remainder of his life, and for a condemnation against the society for such payment during his lifetime. On a motion to quash the appeal, the appellant filed affidavits shewing that, according to the mortality tables, used by assurance actuaries, upon the plaintiff's average expectation of life, the cost of an annuity equal to the pension claimed would be over \$7,000.

Held, following Rodier v. Lapierre (21 Can. S. C. R. 69) ; Macdonald v. Galivan (28 Can. S. C. R. 258 ;) La Banque du Peuple v. Trottier

*PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Nesbitt JJ.

(1) 8 Can. S. C. R. 385.

(2) 17 Can. S. C. R. 141.

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(28 Can. S. C. R. 422) ; *C'Dell v. Gregory* (24 Can. S. C. R. 661) and *Talbot v. Guilmartin*. (30 Can. S. C. R. 482), that the only amount in controversy was the amount of the first monthly instalment of \$62.50 demanded, and consequently, that the Supreme Court of Canada had no jurisdiction to hear the appeal.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, District of Montreal, and dismissing the plaintiff's action with costs.

The circumstances under which the appeal was sought by the plaintiff and the questions raised on the motion are stated by His Lordship the Chief Justice in the judgment now reported.

Belcourt K. C. for the motion.

Beaudin K. C. contra.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—The motion to quash this appeal for want of jurisdiction must be allowed.

The appeal is by the plaintiff from a judgment of the Court of King's Bench dismissing his action by which he claimed from the society, respondent, a life pension of seven hundred and fifty dollars per annum, payable at the rate of sixty-two dollars and fifty cents per month. His statement alleges, in substance, that as a member of the Montreal Police Force he has been a member of the respondent benefit society since its incorporation until the thirty-first of March, 1902 ; that his resignation was accepted to date from the first of April, 1902 ; that he has paid his contributions up to the thirty-first of March, 1902 ; that, according to the by-laws and rules of the society, he then became entitled to a life pension of sixty-two dollars and fifty cents per month, but that the society refused to admit his claim and to inscribe him on its list of pensioners. His conclusions are :

Pourquoi le demandeur conclut à ce que la défenderesse soit condamnée à payer au demandeur la somme de soixante-deux piastres et cinquante cents pour la pension due du premier avril au trente avril, (1902) ; à ce que par le jugement à intervenir il soit de plus déclaré que le demandeur a le droit d'être reconnu comme pensionnaire de la défenderesse et d'être inscrit sur la liste des dits pensionnaires aux termes de l'article 33 des règlements, comme ayant droit sa vie durant à une somme de \$62.50 ; et à ce qu'ordre soit donné à la défenderesse d'inscrire le dit demandeur sur la dite liste sous toutes peines que de droit ; à ce que par le jugement à intervenir, la défenderesse soit de plus condamnée à payer au dit demandeur la dite somme de \$62.50 durant la vie du demandeur, et ce au fur et à mesure que la dite pension deviendra échue ; le premier paiement devant se faire le premier juin prochain et ainsi continuer de mois en mois durant la vie du dit demandeur.

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Under the authority of *Rodier v. Lapierre* (1) ; *Macdonald v. Galivan* (2) ; *La Banque du Peuple v. Trottier* (3) ; *O'Dell v. Gregory* (4) ; *Talbot v. Guilmartin* (5) ; and numerous other cases in the same sense, the case is clearly not appealable.

Mr. Beaudin, in support of the right to appeal, whilst conceding that, under the authorities, he could not invoke the future rights of the appellant, yet contended that the case is appealable upon the ground that the matter in controversy exceeds two thousand dollars in value, the conclusions of the action, as he argued, asking that the appellant be inscribed on the respondents' list of pensioners and the assurance companies' mortality tables shewing that, at his age, as appears by affidavits produced, the cost of an annuity equal to what would be his pension would be over seven thousand dollars. But that contention cannot prevail. The assurance tables are not guides for us in the matter of ascertaining the pecuniary value of the demand. That value is a contingent one depending

(1) 21 Can. S. C. R. 69.

(3) 28 Can. S. C. R. 422.

(2) 28 Can. S. C. R. 258.

(4) 24 Can. S. C. R. 661.

(5) 30 Can. S. C. R. 482.

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 —

upon his life and has not the certainty required to
 give us jurisdiction.

The motion to quash is granted and the appeal is
 quashed with costs as if quashed on motion *in limine*.

Appeal quashed with costs.

Solicitors for the appellant: *Beudin, Cardinal,
 Loranger & St. Germain.*

Solicitors for the respondents: *Leblanc & Brossard.*
