LOUIS LABERGE (PLAINTIFF)............APPELLANT;

1894
*Oct. 2,
*Nov. 8.

AND

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (DEFENDANTS) } RESPONDENTS.

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

Appeal—Amount in dispute—54 & 55 *V. c.* 25, *s.* 3, *s.s.* 4.

By virtue of s-s. 4 of s. 3 of c. 25 of 54 & 55 V., in determining the amount in dispute in cases in appeal to the Supreme Court of Canada, the proper course is to look at the amount demanded by the statement of claim, even though the actual amount in controversy in the court appealed from was for less than $2,000. Thus where the plaintiff obtained a judgment in the court of original jurisdiction for less than $2,000 and did not take a cross appeal upon the defendants appealing to the intermediate court of appeal where such judgment was reversed, he was entitled to appeal to this court. *Levi* v. *Reid* (6 Can. S. C. R. 482) affirmed and followed. Gwynne J. dissenting.

MOTION to quash appeal from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court in favour of the plaintiff for the sum of $285 in an action for $10,000 damages.

The action was one for $10,000 damages for alleged violation of contract.

The Superior Court gave judgment in favour of the plaintiff for $285. The defendant appealed to the Court of Queen's Bench for Lower Canada (appeal side) and that court allowed the appeal and the plaintiff's action was dismissed.

There was no cross appeal to the Court of Queen's Bench by the plaintiff.

*PRESENT:—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and King JJ.

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On an appeal to the Supreme Court of Canada, by the plaintiff.

Macmaster Q.C. moved to quash the appeal for want of jurisdiction, the amount in dispute being under $2,000.

Laflamme contra.

THE CHIEF JUSTICE.—I am of opinion that this appeal is within our jurisdiction. The statute 54 & 55 Vic. ch. 25 enacts that where the right to appeal is dependent upon the amount in dispute such amount shall be understood to be that demanded and not that recovered if they are different. In the present case the amount recovered in the court of first instance was, it is true, only $285, but the appellant's right to appeal is not dependent in any way upon that. The statute makes the amount demanded, which was $10,000, the absolute criterion of the jurisdiction of this court, and without distorting the plain meaning of the language used by Parliament it is impossible to give it any other construction than that I have indicated. The motion to quash must be dismissed.

TASCHEREAU J.—There is undoubtedly room for the objection taken by Mr. Macmaster to our jurisdiction in this case, and I am free to say that I was rather inclined at the hearing of the motion to think that we would have to allow it. But after consideration I have come to the opposite conclusion. We have, in my opinion, jurisdiction to entertain the appeal. It does certainly look strange that though, generally, we have no jurisdiction in cases under $2,000 where the pecuniary value is to rule, yet we should have to entertain appeals where the amount in controversy before us amounts perhaps only to $10, $15, or $25, simply because, at one time, by the plaintiff's demand

the Superior Court had before it an action for an amount exceeding $2,000. Yet that is what Parliament has decreed. The words "the amount demanded" in the statute of 1891, mean the amount demanded by the action, as they do in art. 2311 of the Revised Statutes of Quebec. And though the present appellant asked the Court of Appeal to confirm a judgment given in his favour for $285 only, though he cannot here ask anything more than to restore that judgment of the Superior Court for these $285, (1), yet we have jurisdiction according to this last statute of 1891. This statute was passed for the very purpose of giving us jurisdiction in such a case. To admit the respondent's contention would be to declare in effect, that it is now, as it was before this statute, the amount in controversy on the appeal before this court that is to guide in such cases, and to hold, in fact, that this statute has not changed the law, or has changed it only in the case of an appeal by a defendant. This is a limitation in the construction of the statute that is not borne out by its terms. If the words "the amount demanded" mean, in the case of an appeal by the defendant, the amount demanded in the action, as they necessarily must do, I cannot see how in the case of an appeal by the plaintiff they are susceptible of a different construction.

If the judgment of the Court of Queen's Bench had, adversely to the company, defendant, confirmed the judgment of the Superior Court, the company would clearly then have had a right to appeal to this court. Yet the amount in controversy before this court in such a case would have been only for $285. This, it seems to me, demonstrates that in such a case it was the intention of Parliament to confer, by way of ex-

(1) *Monette* v. *Lefebvre* 16 Can. S.C.R. 387; *Stephens* v. *Chaussé* 15 Can. S. C. R. 379

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ception, upon this court, jurisdiction in cases wherein the matter in controversy on the appeal is less than $2,000, whether the appeal is by the plaintiff or by the defendant.

The only case present to my mind of an appeal by a plaintiff under circumstances precisely similar to those of the present case is *Levi* v. *Reed* (1). That case, which we had to overrule in accordance with the judgment of the Privy Council in *Allan* v. *Pratt* (2), is now restored as law by the amending statute in question.

GWYNNE J.—The question upon this motion is as to the construction and effect of the 4th subsection of sec. 3 of the Dominion statute 54 & 55 Vic. ch. 25 upon the facts of the present case. That section enacts that "whenever the right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different."

Since the decision of this court in *Monette* v. *Lefebvre* (3) following *Allan* v. *Pratt* (2) I feel myself at liberty to express my judgment in the present case unfettered by the decision in *Levi* v. *Reed* (1).

The effect of the above section of 54 & 55 Vic. ch. 25 was, in my opinion, to give to a defendant against whom a judgment should be recovered for a less sum than $2,000 in an action in which the plaintiff demands in his statement of claim an amount exceeding $2,000, the same right of appeal as the plaintiff himself would have in such a case, whose right independently of this enactment, was never questioned in such a case, thus placing plaintiff and defendant in

(1) 6 Can. S. C. R. 482. (2) 13 App. Cas. 780.
(3) 16 Can. S. C. R. 387.

the same position in like cases. But where a plaintiff making a demand in his statement of claim for a sum exceeding $2,000, recovers a judgment against the defendant for a sum less than $2,000 with which judgment he rests content and does not appeal from it, but the defendant availing himself of this provision in 54 & 55 Vic. ch. 25, does appeal, and the plaintiff does not then even avail himself of his right to enter a cross appeal, the matter submitted to the court by such an appeal would be simply, upon the part of the defendant, a demand to reverse the judgment, and upon the part of the plaintiff a demand to maintain it intact, and nothing more. In that case the demand which the plaintiff had made in his statement of claim is gone for ever, and is utterly abandoned and is no longer a demand of the plaintiff. When then, as in the present case, the defendant was successful in his appeal and obtained judgment in his favour and the plaintiff desires to appeal from that judgment, the sole demand which he makes by such appeal is to have his judgment, for the amount less than $2,000 which had been so reversed, restored. This is the only demand which he could make, or the court entertain in such case. They could not entertain a demand for the amount demanded in the statement of claim, nor for anything in excess of the amount for which the judgment he asks to be restored was rendered. Between the amount so demanded and the amount recovered by the judgment which is asked to be restored there is no difference, and so the case does not come within the purview of the enactment in question. Under these circumstances I can see no reason whatever why we should deem ourselves to be under a statutory obligation to hold that to be true which we know to be false, namely, that the amount demanded by the plaintiff is, for the purposes of his proposed

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appeal, to be understood to be that which was demanded in his statement of claim, when in truth and in fact it is for no such amount, but simply for the restoration of the judgment in his favour for less than $2,000, and which had been so reversed. For my part I cannot construe the section as imposing upon me any such obligation, and as the plaintiff's demand is for an amount less than $2,000 I can come to no other conclusion than that there is under the circumstances no appeal to this court, and the appeal therefore should be quashed with costs.

SEDGEWICK and KING JJ. concurred with TASCHEREAU J. that the motion to quash should be refused.

Motion to quash refused with costs.

Attorneys for appellant: *Greenshields & Greenshields.*

Attorneys for respondents: *MacMaster & McLennan.*