

1900 O. E. TALBOT (DEFENDANT).....APPELLANT;  
 \*May 31, AND  
 \*June 12. M. A. L. GUILMARTIN (PLAINTIFF)...RESPONDENT.

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

*Appeal—Jurisdiction—Action for séparation de corps—Money demand.*

In an action by a wife for *séparation de corps* for ill treatment the declaration concluded by demanding that the husband be condemned to deliver up to the wife her property valued at \$18,000. The judgment in the action decreed separation and ordered an account as to the property.

*Held*, that no appeal would lie to the Supreme Court from the decree for separation; *O'Dell v. Gregory* (24 Can. S. C. R. 661) followed; and the money demand in the declaration being only incidental to the main cause of action could not give the court jurisdiction to entertain the appeal.

**MOTION** to quash an appeal from a decision of the Court of Queen's Bench for Lower Canada, appeal side, affirming the judgment of the Superior Court in favour of the plaintiff.

The grounds on which the motion was based are sufficiently indicated in the above head-note and in the judgment of the court.

*Stuart Q.C.* for the motion. There can be no appeal to this court from the judgment in an action *en séparation de corps*; *O'Dell v. Gregory* (1); and the money demand, the granting of which is a necessary consequence of the decree for separation; Art. 208 *et seq.* C. C.; cannot confer jurisdiction. See also

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

*Ontario & Quebec Railway Co. v. Marcheterre* (1);  
*McDonald v. Galivan* (2); 5 Aubry et Rau p. 282.

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*Fitzpatrick Q.C. Sol. Gen. of Canada, contra.* The plaintiff demands by her declaration a sum of \$18,000 which, by sec. 29, subsec. 4 of the Supreme Court Act fixes the amount in dispute on this appeal at that sum and gives jurisdiction to the court to hear it. *Laberge v. Equitable Life Assurance Society.* (3).

The judgment of the court was delivered by :

THE CHIEF JUSTICE.—This is a motion to quash an appeal from a judgment of the Court of Queen's Bench affirming a judgment of the Superior Court, whereby in an action for *séparation de corps* instituted by the present respondent against her husband, the present appellant, the latter court decreed separation.

The action of the respondent is founded on allegations of cruel and unlawful treatment and the conclusion taken is in the usual form for separation from bed and board which of course is the principal relief sought, the other heads which include amongst several others a condemnation to pay \$18,000 money of the respondent alleged to have come to the hands of the appellant, all being dependent upon and subordinate and incidental to the principal head, the separation from bed and board. The appeal therefore, if admitted, would necessarily involve a discussion as to the sufficiency of the evidence and the grounds for the adjudication on the question of separation. The judgment as to the incidental matters would follow as of course the decision of the court upon the main question involved in the action which this court would therefore be compelled to deal with primarily, irrespective

(1) 17 Can. S. C. R. 141.

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

(3) 24 Can. S. C. R. 59.

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altogether of any matters in dispute as to the pecuniary or other consequential rights between the parties.

In the case of *O'Dell v. Gregory* (1) this court has already determined that an action for separation is not within its competence, the statute to which the jurisdiction here must always be referred not having provided for an appeal in this class of cases. If we were to hold that the mere addition to the conclusion of a claim for relief, in respect of a money demand consequent upon and incidental to a judgment for the plaintiff, could give this court jurisdiction, the want of jurisdiction which we must presume was withheld by the legislature for some good reason, would be rendered illusory and the rule formulated in *O'Dell v. Gregory* (1) would be evaded.

We are all of opinion that the motion to quash must be granted.

*Appeal quashed with costs.*

Solicitors for the appellant: *Fitzpatrick, Parent,  
Taschereau & Roy.*

Solicitors for the respondent: *Caron, Pentland &  
Stuart.*