

1898

\*Feb. 16.

\*Feb. 26.

GEO. A. MACDONALD (DEFENDANT)....APPELLANT ;

AND

ELLA GALIVAN (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
LOWER CANADA (APPEAL SIDE.)*Appeal — Jurisdiction—Appealable amount—Monthly allowance—Future rights—" Other matters and things"—R. S. C. c. 135, s. 29 (b)—56 V. c. 29 (D)—Established jurisprudence in court appealed from.*

In an action *en déclaration de paternité* the plaintiff claimed an allowance of \$15 per month until the child (then a minor aged four years and nine months), should attain the age of ten years and for an allowance of \$20 per month thereafter "until such time as the child should be able to support and provide for himself." The court below, following the decision in *Lizotte v. Descheneau* (6 Legal News, 107), held that under ordinary circumstances, such an allowance would cease at the age of fourteen years.

*Held*, that the *demande* must be understood to be for allowances only up to the time the child should attain the age of fourteen years and no further, so that, apart from the contingent character of the claim the *demande* was for less than the sum or value of two thousand dollars and consequently the case was not appealable under the provisions of the twenty-ninth section of "The Supreme and Exchequer Court Acts," even if an amount or value of more than two thousand dollars might become involved under certain contingencies as a consequence of the judgment of the court below, *Rodier v. Lapierre* (21 Can. S. C. R. 69) followed.

*Held* also, that the nature of the action and *demande* did not bring the case within the exception as to "future rights" mentioned in the section of the act above referred to. *O'Dell v. Gregory* (24 Can. S. C. R. 661) ; *Raphael v. Maclaren* (27 Can. S. C. R. 319) followed.

**MOTION** to quash an appeal from the judgment of the Court of Queen's Bench for Lower Canada (appeal side), which affirmed the judgment of the Superior

\* PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

Court, District of Montreal, in favour of the plaintiff with costs.

1898  
 ~~~~~  
 MACDONALD  
 v.  
 GALIVAN.  
 ———

The respondent brought the action in her capacity of tutrix to her minor child, born about four years and nine months previously, and prayed that the defendant might be declared to be the father of the child and condemned to pay to her in her said capacity the sum of fifteen dollars per month until the child should attain the age of ten years and thereafter the sum of twenty dollars per month until such time as the child should be able to support and provide for himself.

The trial court rendered judgment in favour of the plaintiff and this judgment was affirmed by the Court of Queen's Bench which held also that under ordinary circumstances, an allowance such as that demanded would cease upon the child attaining the age of fourteen years.

*A. R. Hall and Smith* for the respondent moved to quash the appeal on the grounds that the matter in controversy was not of the amount or value of \$2,000 and did not otherwise come within any of the exceptions stated in section twenty-nine of the Supreme and Exchequer Court Act as amended. The following cases were cited in support of the motion : *Lizotte v. Deschêneau* (1) ; *O'Dell v. Gregory* (2) ; *Rodier v. Lapierre* (3).

*St. Pierre* Q.C. for the appellant contra. The claim and condemnation are both indefinite and might involve the maintenance of the child for any number of years in case he proved an invalid or became crippled or otherwise unable "to support or provide for himself." In any reasonable view of the case the *demande* must be considered as liable to exceed \$2,000. The

(1) 6 Legal News, 170.

(2) 24 Can. S. C. R. 661.

(3) 21 Can. S. C. R. 69.

1898  
 MACDONALD  
 v.  
 GALIVAN.  
 —

effect of the judgment is to bind future rights of the parties and brings the case within the general terms "other matters and things" used in the last clause of section 29 of "The Supreme and Exchequer Court Act."

TASCHEREAU J.—This case is before us upon a motion to quash the appeal. The action is one "*en déclaration de paternité*," with conclusions—

that the said defendant (now appellant) be declared to be the father of the said minor, and be condemned to pay to the plaintiff *es qualité* the sum of fifteen dollars a month until the child shall have attained the age of ten years, and the sum of twenty dollars a month thereafter until such time as the said minor may be able to support and provide for himself.

The said child was four years and nine months old, less seven days, when the action was served, on the fifth of January, 1897. So that, leaving aside its contingent character, the claim does not amount to \$2,000, if, as held by the judgment appealed from, fourteen years is the limit where an allowance of this kind ceases under ordinary circumstances. The claim must be read as if for an allowance up to that age and no further. But even if more than \$2,000 might have become involved under certain contingencies, as a consequence of the judgment, it would seem that under *Rodier v. Lapierre* (1), the appeal would not lie. The amount claimed rules, but there is no direct claim for a definite sum of \$2,000 or over. The appellant has attempted to rest his right to this appeal upon the amended section 29 of the Supreme Court Act, as to future rights, but under *O'Dell v. Gregory* (2), his contention cannot prevail. See also *Raphael v. Maclaren* (3). Parliament may have intended, by the amending

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

(2) 24 Can. S. C. R. 661.

(3) 27 Can. S. C. R. 319.

act, to give an appeal in cases like the present one, but has not done so.

The motion must be allowed with costs, and the appeal quashed with costs.

1898  
 MACDONALD  
 v.  
 GALIVAN.  
 Taschereau J.

*Appeal quashed with costs.*

Solicitors for the appellant: *St. Pierre, Pelissier & Wilson.*

Solicitors for the respondent: *Johnson, Hall & Donahue.*

---