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*May 18.
*May 21.

ISAIE DUFRESNE *et al.* (DEFENDANTS)..APPELLANTS;

AND

ALFRED GUÉVREMONT (PLAINTIFF)..RESPONDENT.

Appeal from Court of Review—Appeal to Privy Council—Appealable amount—Addition of interest—C. C. P. arts. 1115, 1178, 1178*a*—*R. S. Q. art.* 2311—54 *& 55 V. (D.) c.* 25, *s.* 3, *ss.* 3—54 *V. (P.Q.) c.* 48 *(amending C. C. P. art.* 1115*).*

Under 54 & 55 V. (D.) c. 25, s. 3, ss. 3, there is no appeal to the Supreme Court of Canada from a decision of the Court of Review which would not be appealable as of right to the Privy Council.

Art. 2311 R. S. Q. which provides 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" applies to appeals to the Privy Council.

Interest cannot be added to the sum demanded to raise it to the amount necessary to give a right of appeal. *Stanton* v. *Home Ins. Co.* (2 Legal News 314) approved.

MOTION to quash an appeal from the decision of the Superior Court sitting in review at Montreal, affirming the judgment of the Superior Court, district of Richelieu, which condemned the defendants to pay the

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

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amount claimed by the plaintiff's action with interest and costs.

The plaintiff sued on the 26th December, 1893, for $2,150 with interest at 8 p. c. per annum from date of action till paid, with costs. The action was brought for the recovery of the balance due under a written contract for the construction of an engine and other machinery for which defendants had agreed to pay $3,000 on terms therein mentioned, and upon trial of the cause the issues were found in favour of the plaintiff and the defendants were condemned by the judgment rendered to pay the plaintiff $2,150, with interest as claimed from the institution of the action and costs. This judgment was affirmed with costs against the defendants upon their appeal to the Superior Court sitting in review. The amount of the judgment in dispute with interest added as claimed from the date of action to the 15th of May, 1896, when the appeal was filed, was $2,559.96.

Ouimet Q.C. and *Emard* for the respondent, moved to quash the appeal on the ground of want of jurisdiction, and cited C.C.P. arts. 1178 and 1178a; 54 & 55 Vict. (D.) ch. 25, sec. 3, subsec. 3.

Fleming Q.C. and *Germain*, for the appellants, contra. The jurisdiction of this court depends upon whether there would be an appeal allowed from the judgment now in question to the Judicial Committee of the Privy Council. The practice of the Privy Council has been to add interest when necessary in order to raise the sum recovered to the appealable amount. *Boswell* v. *Kilborn* (1); *Macfarlane* v. *Leclaire* (2); *Gooroopersad Khoond* v. *Juggutchunder* (3); *Quebec Assurance Company* v. *Anderson* (4); *In re Marois* (5). The Privy

(1) 12 Moo. P. C. 467.
(2) 15 Moo. P. C. 181.
(3) 13 Moo. P. C. 472.
(4) 13 Moo. P. C. 477.
(5) 15 Moo. P. C. 189.

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Council also exercises its inherent power of granting appeals although not provided for by provincial statute. The jurisprudence of the Privy Council must govern appeals to that court, and where the jurisdiction of this court depends upon whether or not an appeal would lie to the Privy Council the same rules should be followed in determining the rights of the parties, and the court ought to take into consideration that the condemnation asked for by the demand and awarded by the judgment appealed from imposes upon the appellants liability for both capital and interest amounting in all to over £500 sterling. The questions involved have arisen under a contract for $3,000.

TASCHEREAU J.—This case comes up on a motion to quash. It brings up a question upon which this court has not yet passed, though it was noticed by some of the judges in *Couture* v. *Bouchard* (1). The point to be determined is whether under subsec. 3 of sec. 3, of 54 & 55 V. c. 25, an appeal lies to this court from the Court of Review in cases where no appeal lies from the Court of Review to the Privy Council. We find no difficulty in holding that it is impossible to construe that subsection otherwise than it has been done in the case referred to of *Couture* v. *Bouchard* (1), by Gwynne and Patterson JJ. If the party aggrieved by the judgment has no right of appeal to the Privy Council he has no right of appeal to this court. But the appellant, who is condemned by the judgment of the Court of Review to pay a sum exceeding £500 stg., by adding to the amount claimed in first instance the interest accrued before the judgment, contends that under the decisions of the Privy Council such interest given by the judgment as part of the demand should be taken into consideration, when the right to appeal

(1) 21 Can. S. C. R. 281.

depends upon the amount in controversy. That would appear to be so as a general rule where the right to appeal depends upon the amount in controversy on the appeal. *Gooroopersad Khoond* v. *Juggutchunder* (1); *The Quebec Fire Assur. Co.* v. *Anderson* (2); *Bank of New South Wales* v. *Owston* (3); *Quebec, &c., Railway Co.* v. *Mathieu* (4). But does this apply to appeals to the Privy Council in the province of Quebec, wherein it is enacted in express terms (art. 2311, R. S. Q). 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"? These are plain words, susceptible, it seems to me, of but one construction, that one given to it by the Court of Appeal in *Stanton* v. *The Home Ins. Co.* (5). There the amount claimed was for the very same amount of $2,150 claimed in the present case, and the appellant, as here, to support his right of appeal to the Privy Council, contended that the interest accrued since the institution of the action gave him the statutory right of appeal. But the court held that under the statute (now art. 2311 R. S. Q.) that contention could not prevail. Here are the *considérants* of the judgment refusing leave to appeal:

Considering that it is provided by sec. 25 of ch. 77, C. S. L. C., that whenever the right to appeal from any judgment of any court is dependent on the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different.

And considering that the amount which the appellant demanded in and by his declaration in this cause, was less than £500 sterling, to wit, a sum of $2,150, and that according to law and the practice of this court, the interest accrued since the action was served and returned into court cannot be added to the principal sum demanded in order to determine the right of appellant to appeal from the judgment ren-

(1) 8 Moo. Ind. App. 166; 13 Moo. P. C. 472.
(2) 13 Moo. P. C. 477.
(3) 4 App. Cas. 270.
(4) 19 Can. S. C. R. 426.
(5) 2 Legal News 314.

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dered in this cause; the court doth reject the motion of the appellant for leave to appeal to Her Majesty in Her Privy Council, with costs.

The application for leave to appeal was made, it is true, in that case by the plaintiff, whilst here, the appeal is taken by the defendant, but there is no room that I can see for the contention that the statute does not apply to both cases. *Laberge* v. *The Equitable Life Association* (1). And in *Grand Trunk Railway Co.* v. *Godbout* (2), the Court of Appeal applied the rule to an appeal by the defendant. See also *Richer* v. *Voyer* (3).

It might perhaps be argued here, as we are not bound by those decisions, that this enactment does not apply to appeals to the Privy Council. But as said by Dorion C.J. in that same case of *Grand Trunk Railway* v. *Godbout* (2), the words of the enactment do not admit of such contention. They apply to *all* appeals in the province, and in the Consolidated Statutes of 1860 they are to be found in the same statute that provides for the appeal to the Privy Council. And that statutory right of appeal to the Privy Council over which the province has a legislative control, not only never questioned by the Privy Council itself, but expressly recognized in all the cases from the province wherein the question came up before their Lordships, (without, of course, interfering with Her Majesty's prerogative rights on the subject) cannot, by any rule of construction that I know of, be excluded from it. That being so this appeal must be quashed, as the appellant has no right of appeal to the Privy Council.

It is needless to say that we do not lose sight of the ruling of the Privy Council in *Allan* v. *Pratt* (4), and that line of cases, but, as remarked by Dorion C.J. in the case of *Stanton* v. *The Home Ins. Co.* (5) the attention of the Privy Council does not appear to have been drawn to this particular enactment.

(1) 24 Can. S. C. R. 59.
(2) 3 Q. L. R. 346.
(3) 2 R. L. 244.
(4) 13 App. Cas. 780.
(5) 2 Legal News 314.

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As for *Monette* v. *Lefebvre* (1) in this court, and our decisions in the same sense, they have no application. The Quebec statute (art. 2311 R. S. Q.) though applying to the appeals to the Privy Council, does not apply to appeals to this court, though now we have subsec. 4 of 54 & 55 V., c. 25 in the same sense.

The appeal should be quashed, but without costs, as the point is a new one, and the judgment is not founded upon precisely the same grounds as were urged by the respondent at the argument of the motion.

Appeal quashed without costs.

Solicitors for appellants: *Germain, Olivier & Désy.*

Solicitors for respondent: *Ouimet, Emard & Brousseau.*