

1897 THE CITIZENS' LIGHT AND } APPELLANT;
 *May 8. POWER COMPANY (DEFENDANT) }

*May 12.

AND

PARMELIA PARENT (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER
 CANADA SITTING IN REVIEW AT MONTREAL.

*Appeal from Court of Review—Appeal to Privy Council—Appealable
 amount—54 & 55 V. (D.) c. 25, s. 3, s.s. 3 & 4—C. S. L. C. c.
 77, s. 25—Arts. 1115, 1178 C. C. P.—R. S. Q. art. 2311.*

In appeals to the Supreme Court of Canada from the Court of Review (which, by 54 & 55 Vict. ch. 25, s. 3, s.s. 3, must be appealable to the Judicial Committee of the Privy Council,) the amount by which the right of appeal is to be determined is that demanded, and not that recovered, if they are different. *Dufresne v. Guevremont* (26 Can. S. C. R. 216) followed.

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 Montreal, which condemned the appellants to pay \$2,000, with interest and costs to the respondent.

The respondent sued for \$5,000 damages for the death of her late husband which, it was alleged, was caused through the appellant's negligence, but recovered only \$2,000 with interest and costs by the judgment in the Superior Court. On an appeal taken by the appellant, the Court of Review affirmed the decision of the trial court with costs. The appeal to the Court of Queen's Bench having been taken away by the amendment to article 1115 of the Code of Civil Procedure (54 Vict. (Q.) ch. 48, sec. 2), the defendant appealed directly to the Supreme Court of Canada, under the provisions of 54 & 55 Vict. (D.) ch. 25, s. 3, s.s. 3.

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

Charbonneau for the respondent, moved to quash the appeal on the ground of want of jurisdiction, and cited *Couture v. Bouchard* (1); *Turcotte v. Dansereau* (2); *Laberge v. The Equitable Life Assurance Society* (3); *Allan v. Pratt* (4).

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R. C. Smith for the appellant contra. The decision in *Dufresne v. Guévremont* (5) applies here. The amount of the *demande* rules where the appeal is dependent upon the amount in dispute.

TASCHEREAU J.— This is an appeal from the Court of Review, which, it is conceded, lies to this court, under 54 & 55 Vict., ch. 25 (D), only where an appeal lies in the case from the Court of Review to the Privy Council. The amount claimed by the declaration is \$5,000, and the judgment of the Superior Court, confirmed in review, is for \$2,000. The appeal is by the defendant.

The respondent moves to quash the appeal on the ground that the judgment being only for \$2,000, (and not £500 sterling), the case is not appealable to the Privy Council. That contention cannot prevail. It is settled by this court in *Dufresne v. Guévremont* (5), that whenever the right to appeal to the Privy Council is dependent upon the amount in dispute, such amount must be understood to be that demanded, and not that recovered, if they are different. In that case the amount given by the judgment appealed from and in controversy on the appeal was sufficient to make the case appealable, but the amount demanded by the declaration was not, and we held that as it is the amount demanded that ruled there was no appeal. Here, the amount given by the judgment appealed

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

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

(2) 26 Can. S. C. R. 578.

(4) 13 App. Cas. 780.

(5) 26 Can. S. C. R. 216.

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from and in controversy on the appeal is not sufficient to make it appealable, but the amount demanded is, and it being the amount demanded that rules the case is appealable. Now here, the amount demanded is over £500 sterling. The case is therefore appealable. We are bound by our previous decision on the point. The motion must be dismissed with costs.

GWYNNE J.—The point raised upon the motion to quash the appeal in this case having been expressly decided by the unanimous judgment of the learned judges of this court who heard the case of *Dufresne v. Guévremont* (1) it is not necessary that I should state the reasons upon which, but for that judgment, I should feel obliged to arrive at a contrary conclusion in the present case further than this, that I should be of opinion that the legislature of the late Province of Canada never contemplated by sec. 25 of ch. 77 of the Consolidated Statutes of Lower Canada which is intituled "An Act respecting the Court of Queen's Bench," and was passed for the purpose of defining the jurisdiction original and appellate of that court, assuming to prescribe any mode by which it should be determined in any case whether the amount in dispute was sufficient to give such jurisdiction to Her Majesty in Her Privy Council to entertain an appeal from the judgment of a court in Lower Canada. So likewise I should have been of opinion that we are not justified in ignoring the judgment rendered in the case of *Allan v. Pratt* (2) upon the suggestion that that judgment was rendered without due consideration of the sec. 25 of said ch. 77, or without the attention of the Privy Council having been drawn to it, or that we are justified in entertaining the opinion that the judgment in that case would have been different from

(1) 26 Can. S. C. R. 216.

(2) 13 App. Cas. 780.

what it is if due consideration had been given by Her Majesty in Her Privy Council to the limitation which it is assumed that section imposed upon the jurisdiction of the Privy Council.

*Dufresne v. Guévremont* (1) must be conclusive upon the point in this court, and in cases like the present parties who may not be satisfied with that judgment must be remitted to raise the question as they may be advised before Her Majesty in Her Privy Council.

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SEDGEWICK, KING and GIROUARD JJ. concurred in the reasons given by Mr. Justice Taschereau.

*Motion refused with costs.*

Solicitors for the appellant: *Smith & MacKay.*

Solicitors for the respondent: *Charbonneau & Pelletier.*

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