THE CANADIAN PACIFIC RAILWAY COMPANY (DEFENDANTS). } APPELLANTS;

AND

FRANK McDONALD (PLAINTIFF) .... RESPONDENT.

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*Nov. 10
*Dec. 23

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Appeal — Jurisdiction—"Matter in controversy"—Annuity—Quebec "Workmen's Compensation Act," R.S.Q., 1909, arts. 7321 et seq. —9 Edw. VII., c. 66—"Supreme Court Act," R.S.C., 1906, c. 139, s. 46(c)—Construction of statute.

Plaintiff's action, under the Quebec "Workman's Compensation Act," claimed $450 for loss of earnings, for six months, during incapacity occasioned by personal injuries, and also an annuity of $337 *per annum*. The plaintiff recovered judgment for the specific amount claimed and he was also awarded an annuity of $247.50, which might be subject to revision, under the statute. The capitalized value of the annuity would, probably, amount to a sum exceeding $2,000, the appealable limitation fixed by section 46(c) of the "Supreme Court Act," R.S.C., 1906, ch. 139.

Held, Davies J. dissenting, that, in the circumstances of the case, it did not appear that the *demande* amounted to the sum or value or two thousand dollars, within the meaning of section 46(c) of the "Supreme Court Act," and, consequently, the court had no jurisdiction to entertain the appeal. *Talbot* v. *Guilmartin* (30 Can. S.C.R. 482); *La Cie. d'Aqueduc de la Jeune Lorette* v. *Verrett* (42 Can. S.C.R. 156); *Lapointe* v. *The Montreal Police Benevolent and Pension Society* (35 Can. S.C.R. 5), and *Macdonald* v. *Galivan* (28 Can. S.C.R. 258), referred to.

MOTION to quash an appeal, for want of jurisdiction, from the judgment of the Court of King's Bench, appeal side, affirming the judgment of Fortin J., in

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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the Superior Court for the District of Montreal, by which the plaintiff's action was maintained with costs.

The circumstances of the case are stated in the head-note and the questions in issue on the appeal are discussed in the judgments now reported.

Vipond for the respondent, supported the motion.

Holden K.C. contra.

THE CHIEF JUSTICE.—This is a motion to quash for want of jurisdiction. The question raised is not free from difficulty, but, after careful consideration of the Act and of the jurisprudence of this court, I have come to the conclusion that the motion must be granted.

The dispute between the parties to this litigation is with respect to the right of the plaintiff to compensation for injuries measured by the terms of the "Workmen's Compensation Act" of the Province of Quebec, and the question is: Does the thing in controversy amount to the sum of $2,000 ? (See section 46(*c*), "Supreme Court Act.")

The compensation payable to an injured workman, under the Act, takes the form, in the case of permanent incapacity, of an annual "rent" or pension which continues during his life; but, as its amount is subject to revision (see section 26 of the Act), it cannot be said to be a life rent within the ordinary meaning of that term (Planiol, vol. 1, nos. 2251 and 2783). The quantum of the rent is determined by the extent to which the earning power of the plaintiff has been reduced as the result of the injury received. That is the

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basis of the compensation, so that, if his earning power improves at any time within four years after judgment rendered (sec. 26), the amount of compensation awarded is liable to be reduced on cause shewn, and, if that earning power is restored, the right to compensation ceases altogether. There is this other element of contingency to be considered — the uncertainty of human life — and, in the present case, on the medical evidence, I gather that the expectation of life is very short.

It is true that the Act (9 Edw. VII., ch. 66) provides, by section 2 (*c*), that the capital of the "rent" shall not, except in the case mentioned in article 5, exceed $2,000. This does not mean that the employer is entitled, on payment of that sum, to escape his liability. The purpose of the statute, following the principle of the French Act, is to introduce periodical payments in lieu of a capital payment so as to protect the workman and the employer. The combined effect of sections 2(*c*) and 9 is to enable the workman to demand, as soon as his permanent incapacity to work is ascertained, that the "rent" payable to him shall be capitalized and that the capital which will produce this "rent" — reduced to $2,000 if it exceeds that sum — shall be paid not to himself, but to an insurance company. It is to be observed also that there is grave doubt as to whether it can be said that the permanent incapacity to work can be ascertained until the four years period, during which the amount of the pension is subject to revision, has expired. In any event, it is only when this option is exercised that any "capital of the rent" comes into existence. That being the measure and the nature of the plaintiff's right, is it possible for us to say that

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there is in controversy between the parties a thing which has a value realizable in money to the extent of $2,000? I fail entirely to see how a right, the existence of which is dependent upon so many contingencies and which, under the terms of the statute is intended to provide the workman with a pension payable quarterly *only so long as his physical condition as affected by the injury is such as to justify its payment,* can be said to have any commercial value at all. It is not a thing which is *in commercio,* more particularly in view of those provisions of the statute which make the pension inalienable, not seizable (sec. 12), and subject to revision by the court as above stated.

The practice of this court in cases arising in Quebec seems to be against our jurisdiction. In *Toussignant* v. *County of Nicolet*(1), Taschereau J., speaking for the court, said:—

> It is settled law that neither the probative force of the judgment nor its collateral effects, nor any contingent loss that a party may suffer by reason of a judgment are to be taken into consideration when our jurisdiction depends upon the pecuniary amount.

In *Talbot* v. *Guilmartin*(2), the relief asked for included a condemnation to pay $18,000, money alleged to have come into the hands of the appellant, and, notwithstanding, the court refused to entertain the appeal. The last case is *La Compagnie d'Aqueduc de la Jeune Lorette* v. *Verrett*(3), in which it was held that this court was without jurisdiction. In that case the plaintiff asked for a declaration that certain rights and privileges to construct an aqueduct were exclusive. The value of those rights was shewn, on affidavit, to far exceed the appealable amount. On

(1) 32 Can. S.C.R. 353. (2) 30 Can. S.C.R. 482.
(3) 42 Can. S.C.R. 156.

the whole, therefore, I am of opinion that we are without jurisdiction because, as the Chief Justice said, in *Macdonald* v. *Galivan*(1), "there is no direct claim for a definite sum of $2,000," or as the Chief Justice said, in *Lapointe* v. *The Montreal Police Benevolent and Pension Society*(2), the "value of the demand is a contingent one depending upon his life."

It may be that I have been influenced in reaching this conclusion by the fact that the Quebec "Workmen's Compensation Act" specially limits appeals (see section 22), and to allow an appeal here in a case like this would be contrary to the spirit of the Act. In any event, in case of doubt, the question should be resolved against jurisdiction. *Interest reipublicæ ut sit finis litium.*

DAVIES J. (dissenting).—Our jurisdiction to hear this appeal is challenged by a motion to quash on the ground that the "matter in controversy" does not "amount to the sum or value of $2,000" within section 46 of the "Supreme Court Act."

The action was one brought by a workman against his employer under the "Workmen's Compensation Act" of Quebec, R.S.Q., 1909, art. 7321 *et seq.*

The claim of the plaintiff was to recover $450 for one-half year's earnings during incapacity to earn wages before action and also for a life rent or indemnity of $337 per annum.

The judgment awarded the plaintiff a life rent of $247.50 per annum to commence on the 24th December, 1911.

The capitalized value of this life rent or annuity at

(1) 28 Can. S.C.R. 258. (2) 35 Can. S.C.R. 5.

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3% would amount to $8.266; at 4% to $6,175; at 5% to $4,940; and at 6% to $4,116.66; and if such capitalized value can be taken to be directly involved in this case as a matter in controversy between the parties no doubt could exist as to our jurisdiction.

While in the ordinary case of a life rent or annuity its value would be simple of calculation, in cases such as this its continuance would be subject to so many contingencies that its value would be difficult, if not impossible, for an appeal court to determine. That value would depend largely upon the condition and state of health in which the injuries of the annuitant arising from the accident left him. The ordinary annuity tables, owing to the contingencies arising from the condition and state of health of the workman, might be quite inapplicable and the difficulties of placing an estimate upon its value almost insuperable.

The evidence in the record of the case we have now before us affords an excellent illustration of these difficulties; and if we were driven to estimate the value of the life-rent from this evidence we might well conclude that the case is not within our jurisdiction.

The two medical men examined as experts differed on some material points. Dr. De Martigny's opinion was that as the result of the accident two surgical operations were necessary, one to cut off one of the workman's legs very high up near the thigh and the other to cut off one of his arms. Dr. Archibald did not concur in this view so far as the arm was concerned.

For us, as an appeal court, to attempt to determine the contingencies of life or death which might follow one or both of these operations so as to estimate the

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value of the life-rent and determine whether we have jurisdiction to hear the appeal is a course which, I feel certain, our "Supreme Court Act" never contemplated as one of our duties. *Lapointe* v. *Montreal Police Benefit Pension Society*(1). It seems to me, however, that the "Workmen's Compensation Act" relieves us of all these difficulties and establishes the value of the life-rent for us. Article 7329 of the Revised Statutes of Quebec (1909) reads as follows:—

> As soon as the permanent incapacity to work is ascertained, or in case of death of the person injured within one month from the date of the agreement between the employer and the parties interested, or if there be no agreement, within one month from the date of the final judgment condemning him to pay the same, the employer shall pay the amount of the compensation to the person injured or his representatives, or, as the case may be, and at the option of the person injured or of his representatives, shall pay the capital of the rent to an insurance company designated for that purpose by order in council. 9 Edw. VII. ch. 66, sec. 9.

That section confers upon the injured workman, who has obtained judgment for a life-rent, the right to demand payment of

> *the capital of the rent* to an insurance company designated by order in council

and imposes upon the employer the obligation to make the payment of such capital when demanded.

That being so, it appears to me that the capitalized amount of the life-rent awarded the workman is a matter in controversy in this action directly flowing from the judgment awarding the life-rent itself; and it being declared by art. 7322, sub-sec. 2, that the capital shall not exceed $2,000, in cases such as this, that amount at least is in controversy.

The "Workmen's Compensation Act" of Quebec by

(1) 35 Can. S.C.R. 5.

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imposing the obligation upon the employer of paying over the capital representing the life-rent to a company as security, in part at least, for the payment of the life-rent to the workman has put a statutory value for that purpose upon the life-rent.

In my opinion such a correlative right and obligation arising directly from and being a direct consequence of the judgment awarding the life-rent gives us jurisdiction in cases where such capitalized value is not less than $2,000, which it obviously is not in this case.

The statute does not release the defendant from its obligation to pay the life-rent adjudged to the plaintiff, but capitalizes it at an arbitrary maximum limit of $2,000. It confers upon the plaintiff the right within one month from the date of the final judgment to compel

> payment of the capital of the life rent (not exceeding $2,000) to an insurance company.

In the case now before us that maximum limit would obviously be the sum which the plaintiff had a right to demand should be paid and which the defendants were bound to pay over. Unless, therefore, we are prepared to say that we could enter upon a consideration of the contingencies or possibilities under which that $2,000 might be reduced it seems to me the appeal is within our jurisdiction.

IDINGTON J. concurred in the opinion of the Chief Justice.

DUFF J.—The question to be determined on this application is whether or not we have jurisdiction to en-

tertain the appeal under section 46(*c*) of the "Supreme Court Act"; in other words, whether in the suit out of which this appeal arises

> the matter in controversy * * * amounts to the sum or value of $2,000.

The effect of the accident from which the respondent suffered was to produce "an absolute and permanent incapacity" within the meaning of article 7322 (*a*) of the Revised Statutes of Quebec, 1909, and the respondent, therefore, became entitled to a "rent" for life equal to 50% of his yearly wages, subject to any question which might arise under article 7322(2), R.S.Q., 1909, and to the contingency of "revision" under article 7346. The respondent, moreover, is entitled, at his option, under article 7329, R.S.Q., 1909, to require the appellants to pay the capital of the "rent" to an insurance company "designated for that purpose by order-in-council."

It seems to be manifestly impossible to say that the amount "demanded" by the respondent in his action was equal to the sum of $2,000. The respondent "demanded" a judgment entitling him to a life-annuity which, in the aggregate, might or might not amount to that sum. I think that is not sufficient to bring the case within the first alternative of sub-section (*c*) of section 46 of the "Supreme Court Act."

As to the second alternative ground of jurisdiction, under that sub-section, I am inclined to think that "the matter in controversy" can only "amount to * * * the value of $2,000," within the meaning of the words to be construed, when the plaintiff is claiming something other than the mere payment of money. That seems to be the more natural construction, and

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it was, moreover, the view which was taken by this court, apparently, in *Lapointe* v. *The Montreal Police Benevolent and Pension Society*(1). Assuming, however, that in this case "the matter in controversy" ought to be regarded as the right claimed by the plaintiff to be paid the statutory annuity subject to the statutory incidents and conditions (and that the case, consequently, is covered by the sub-section in question, if the value of that right can be said to amount to $2,000), I think the appellants still fail because there are no grounds before us justifying the conclusion that the right claimed and established has a value equal to that sum. Unfortunately the accident has left the respondent's expectation of life in a state of very grave uncertainty, and not only has no attempt been made to put a capital value upon the right established by the judgment he has recovered, but it would seem that any attempt to do so could hardly, in the circumstances, be expected to result in any conclusion sufficiently definite to serve as a guide for the purposes of this application.

Counsel for the appellants rested exclusively upon the provision of article 7322(2), arguing that this enactment was a statutory declaration as to the value of the annuity when the incapacity is permanent. I am afraid I cannot follow this contention. There is nothing whatever to indicate that, in fact, the legislature had in mind any such object in framing this provision; in any case, it would still be our duty to apply section 46(*c*) of the "Supreme Court Act" according to the proper construction of the words used by the Parliament of Canada, and we should be obliged to

(1) 35 Can. S.C.R. 5.

hold that our jurisdiction, under that provision, only arises when "the matter in controversy" is, in fact, shewn to amount to "the sum or value of $2,000." The requirement imposed by article 7329, R.S.Q., 1909, by which the employer comes under an obligation to pay the capital of the "rent" to an insurance company, does not help the appellants. It may be open to dispute whether, on the one hand, this article contemplates that the incidence of the obligation established by the judgment shall fall thenceforth upon the insurance company exclusively (the employer being relieved and the amount to be paid being determined by arrangement between the employer and the insurance company) or, on the other hand, the sum here required to be paid to the insurance company is merely intended to stand as security for the due performance by the employer of his obligation. Whichever view be taken of the effect of the article it can give no help to the appellants on this application. If the moneys paid are intended to stand as security only, then it seems plain that such an obligation to provide security, as a right incidental to the judgment, can afford no final criterion for determining the value of the matter in controversy in the proceedings leading up to the judgment. If, on the other hand, it is to be regarded as the purchase price of an annuity to be paid to the plaintiff by the insurance company, we have no means before us of ascertaining, with any degree of certainty, the amount of it; and until, at all events, the sum has been actually determined by payment, the attempt to ascertain the probable amount of it, in effect, resolves itself into an attempt to appraise the value of the plaintiff's right with all the attendant difficulties already indicated.

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ANGLIN J.—Our jurisdiction in this appeal depends upon whether the matter in controversy, according to the plaintiff's claim based on the R.S.Q., 1909, arts. 7321 *et seq.*, amounts to the sum or value of $2,000 ("Supreme Court Act," sec. 46).

Except the decision in the case of *Lapointe* v. *Montreal Police Benefit Pension Society* (1), I know of no authority binding on this court which requires us to hold that where the plaintiff's right to an annuity or pension is the subject of litigation, the value of the matter in controversy is to be deemed limited to the amount of the first annual payment. There are dicta of some judges' susceptible of such an interpretation, to be found in cases in which the actual claim in the action was limited to a single instalment of a periodical payment. But these cases are so obviously distinguishable that reference to them is unnecessary. In such cases it is the settled jurisprudence of this court that jurisdiction will not be entertained, although the effect of the judgment in appeal may be to determine the rights of the parties in regard to payments which, in the aggregate, must amount to a sum greater than $2,000. Although it is on the authority of such cases that the *Lapointe* (1) decision is based, under the doctrine of *stare decisis* I bow to its authority, but, if free to do so, I would respectfully decline to follow it. An ordinary annuity or pension has a market value capable of ascertainment and that value is the amount in controversy where the judgment in the action determines directly the right to the entire annuity or pension and all future payments thereof are exigible by process issued under such judgment.

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The *Lapointe Case*(1), however, is not decisive of the question of jurisdiction now before us.

In the present case, as is pointed out by my Lord, the Chief Justice, we are not dealing with an ordinary annuity. The pension, or the "rent" as the statute terms it, awarded by the judgment is inalienable and its amount is subject to revision during the ensuing four years and to reduction if the plaintiff's earning capacity should increase. (Art. 7346.) The evidence of Dr. deMartigny discloses that the plaintiff may have to undergo one or perhaps two serious and perilous operations in the near future. It is not unreasonable to assume that in determining the amount of the compensation awarded this view of the situation was accepted. There is no evidence before us of the plaintiff's expectation of life. In the peculiar circumstances of this case it would probably be very difficult to obtain testimony, and it would seem to be extremely unlikely, that reliable actuarial evidence could be procured that the annuity or pension claimed by the plaintiff, if awarded as claimed, would have a value of not less than $2,000. Upon that aspect of the case, quite apart from the authority of the *Lapointe*(1) decision, I would not be prepared to affirm jurisdiction.

The matter in controversy, however, is to be regarded from the point of view of the defendants as well as from that of the plaintiff. It is true that in extent the plaintiff's right and the defendants' responsibility are correlative; but the real value of the matter in controversy may perhaps be better appreciated if regarded from the point of view of the liability

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imposed upon the defendants, who are seeking to appeal. Under art. 7329 the defendants may, at the option of the plaintiff, be required to

> pay the capital of the rent to an insurance company designated for that purpose by order in council.

It is this feature of the present case which distinguishes it from *Lapointe* v. *Montreal Police Benefit and Pension Society* (1). By sub-section 2 of art. 7322 it is provided that:—

> The capital of the rents shall not, however, in any case except in the case mentioned in art. 7325, exceed $2,000.

The present case is not within art. 7325.

As a direct result of the judgment in many cases under the Act, the defendants may be required to pay to an insurance company a sum of $2,000.

It has been suggested that this sum is to be paid merely by way of security; that it remains the property of the defendants to be repaid to them when the rent ceases; and that payment of it does not relieve them from their liability to pay the rent itself. If that be the purpose and effect of the payment of the capital to an insurance company, there is, no doubt, much to be said in favour of the view that the capital so payable is not the real matter in controversy between the parties, but only something incidental to the claim and judgment, which does not confer jurisdiction. *Talbot* v. *Guilmartin* (2). As at present advised, I am, with respect, unable to take that view of the legislation. Nowhere in the Act is it stated that the capital of the rent to be paid to the insurance company, under art. 7329, is to stand merely as security. On the con-

(1) 35 Can. S.C.R. 5. (2) 30 Can. S.C.R. 482.

trary, by art. 7331 provision is made for determining the conditions upon which the Lieutenant-Governor in Council may authorize insurance companies *"to pay* the said rents in virtue of this sub-section." And, by article 7340, it is provided that the compensation shall be secured by a privilege upon the defendant's property

so long as the sum necessary to *procure* the required rent has not been paid to an insurance company.

In view of these provisions of the statute the purpose of the payment of the capital of the "rent" provided for by art. 7329 seems to me to be not the giving of security for the continued payment of the rent itself by the defendants, but the purchase or procuring for the plaintiff, from an authorized insurance company, of a pension or annuity equal in amount to the compensation to which the judgment entitles him. Subject to a possible right of refund *pro tanto* in the event of a revision of the compensation under art. 7346, the capital, when paid to the insurance company, would, in the view which I suggest, cease to be the property of the defendants and become the property of the insurance company, which would, thereafter, assume the sole liability for the rent. If this were not intended, but the real purpose were merely the giving of security for the future payment of the rent by the defendants, I find it difficult to understand why an insurance company should be selected as the depositary. If as a direct result of the judgment, therefore, the defendants would be liable, at the plaintiff's option, to pay a sum of $2,000, I would be prepared to hold that they might appeal to this court. From their point of view, in that case, their liability to pay a sum of $2,000 would

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be a real matter in controversy in the action. But it is not, in the present case, necessary to determine what is the proper construction of the Quebec legislation, and as the question was not argued, it is not desirable to do so.

On the view of the statute to which I am at present inclined, the $2,000 is a maximum and it was not intended to require the defendant to pay that sum in every case regardless of the physical condition or the state of health of the plaintiff. In many cases in which an annuity larger than that awarded to the present plaintiff is given, the nature of the injuries sustained or the delicate health of the injured person would enable the defendant to procure an insurance company to undertake his obligation for a sum less than $2,000. No doubt it is the policy of the Government to authorize a sufficient number of insurance companies to deal in these "rents" to secure to defendants the benefit of real competition. To determine what capital sum a defendant would be required to pay under the statute, in order to procure for the plaintiff a "rent" from an insurance company, would necessitate the giving of evidence on which a finding of the plaintiff's expectation of life under all the circumstances of the case could properly be based, and actuarial testimony of the market value of his annuity based upon such expectation. The contingency of revision would also have to be taken into account. I cannot think that the "Supreme Court Act" contemplates our entering upon such an inquiry to determine jurisdiction. But if it does, we have not the necessary evidence in the present case. Upon the material before us it is not possible to say what is the market value of the plaintiff's annuity; it is not possible to

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say what sum the defendants might be required to pay as capital of the rent to an insurance company under art. 7329. It is, therefore, not established that the matter in controversy amounts to the sum or value of $2,000.

For these reasons I concur in granting the motion to quash this appeal.

BRODEUR J.—I concur with the Chief Justice.

Appeal quashed with costs.

Solicitors for the appellants: *Meredith, Macpherson, Hague & Holden.*

Solicitors for the respondent: *Vipond & Vipond.*