EMILE COTÉ (PLAINTIFF).....APPELLANT;

AND

THE JAMES RICHARDSON COMPANY (INTERVENING PARTIES)....RESPONDENTS.

1906

*Oct. 15, 16.
*Nov. 19.
*Nov. 29.

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

Appeal—Jurisdiction—Intervention—Matter in controversy—Judicial proceeding—R.S.C. c. 135, s. 29.

An intervention filed under the provisions of the Code of Civil Procedure of the Province of Quebec is a "judicial proceeding" within the meaning of section 29 of the Supreme and Exchequer Courts Act, and a final judgment thereon is appealable to the Supreme Court of Canada where the matter in controversy upon the intervention amounts to the sum or value of $2,000 without reference to the amount demanded by the action in which such intervention has been filed. *Walcott* v. *Robinson* (11 L.C. Jur. 303); *Miller* v. *Déchêne* (8 Q.L.R. 18); *Turcotte* v. *Dansereau* (26 Can. S.C.R. 578); and *King* v. *Dupuis* (28 Can. S.C.R. 388) followed. *The Atlantic and North-West Railway Co.* v. *Turcotte* (Q.R. 2 Q.B. 305); *Allan* v. *Pratt* (13 App. Cas. 780), and *Kinghorn* v. *Larue* (22 Can. S.C.R. 347) distinguished.

Girouard J. dissented.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Gaspé, by which the plaintiff's action was maintained with costs, the attachment before judgment therein quashed, an intervention by the present respondents maintained and the respondents declared to be owners of a quantity

*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington, Maclennan and Duff JJ.

1906

COTÉ
v.
THE JAMES RICHARDSON Co.

of spool-wood which had been seized under the provisional attachment.

On the appeal coming on to be heard, a motion was made on behalf of the respondents to quash the appeal on the ground that the sum or value demanded by the action being only $850.49 the judgment was not appealable to the Supreme Court of Canada, although the value of the wood seized and claimed by the intervention exceeded the sum or value of $2,000.

The questions raised upon the motion are fully discussed in the judgments now reported.

Stuart K.C. for the motion.

Flynn K.C. contra.

The judgment of the court, upon the motion, was delivered by

THE CHIEF JUSTICE.—The plaintiff Coté brought, in July, 1905, an action in the Superior Court, at Gaspé, against one Dionne to recover the sum of $804.49, and at the same time procured a writ to attach, by way of *saisie-arrêt* before judgment, the goods of his debtor on the alleged ground of fraud and secretion. Thereupon certain spool-wood was attached as the property of the defendant, and subsequently The James Richardson Company, Limited, applied for and obtained leave to intervene in the suit between Coté and Dionne, alleging that the wood seized was really their property. By the intervention and exhibits filed in support the value of the wood is alleged to be over $4,000.

The plaintiff in the main suit then became defendant on the proceedings in intervention. He contested

the claim of the intervenants to the wood and denied that they had any title to it.

On these issues the parties went to trial. After the evidence was practically all in, the grounds of intervention were, by leave of the court, amended and the amended intervention and a new plea were filed, but the issue as to the ownership of the wood remained substantially the same.

The defendant in the main action suffered judgment by default, but the attachment was set aside, the intervention maintained and The Richardson Company declared to be the owners of the wood seized.

On appeal to the Court of Queen's Bench this judgment was confirmed, Lacoste C.J. and Blanchet J. dissenting, and from this judgment the present appeal is taken.

On the appeal to this court the question of jurisdiction is raised. I take it to be settled now beyond doubt that the extent of our jurisdiction depends upon the amount in controversy and that, by the amendment 54 & 55 Vict. ch. 25, sec. 3, sub-sec. 4, is determined by the amount demanded.

On the issues now before us what is the demand? Undoubtedly that contained in the intervention. The suit between Coté and Dionne was disposed of by the judgment in the Superior Court and the judgment appealed from is that rendered by the court of appeal on the merits of the intervention in which the matter in controversy is the title of the intervening parties to the lumber seized. It was to assert this title that they intervened and the issue between them and the plaintiff, defendant in the proceedings in intervention, is as to the validity of that title. If the judgment appealed from is confirmed they, the intervening parties, re-

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

The Chief Justice.

main in undisputed possession of the lumber; if on the contrary it is reversed then the property does not revert to the plaintiff, defendant in the intervention, to be disposed of as his interest may appear, but remains vested in the original defendant Dionne and liable to the claims of all his creditors, the plaintiff bringing his attachment securing to himself priority of satisfaction unless the debtor is insolvent, in which case he would only be entitled *pari passû* with the rest of the creditors. The course of proceeding when insolvency is alleged is to give notice to the creditors to come in and prove their debts by a particular day after which a final distribution of the property is made among them. Articles 672 and 673 C.P.Q.

An intervention is "a judicial proceeding" within the meaning of section 29 of the "Supreme and Exchequer Courts Act."

The intervening party stands in the same position as a plaintiff. *L'intervention n'est que l'exercise d'une action;* Rousseau & Laisney, Vol. 5, p. 494, n. 8(1). When, as in the present case, the intervenant is a third party who comes into the case, not to maintain nor contest the principal demand, but to assert a right personal to himself, new issues are raised which may be disposed of independently of the main suit: *Walcot* v. *Robinson*(2). The proceeding in intervention was to all intents and purposes an action in revendication; *Miller* v. *Déchène*(3). It has been held that the withdrawal of the principal demand does not put an end to the intervention: *Mulholland* v. *Benning*(4); Carré & Chauveau, Adolphe, T. 3, Q. 1273(4).

(1) Art. 220 C.P.Q.
(2) 11 L.C. Jur. 303.
(3) 8 Q.L.R. 18.
(4) 15 L.C.R. 284.

On doit distinguer le cas où la demande principale est repoussée par des motifs tirés du fond, de celui où elle est rejetée à raison d'une nullité ou d'une fin de non-reçevoir.

Dans le premier cas, auquel se rapportent les deux espèces jugées par la Cour de Bourges, les 2 avril, 1828 (J. de cette Cour. 7e Année, p. 237; S.V. 29, 2, 248), et 13 mai, 1831 (J. Av. t. 42, p. 249; Devill., 1832, 2, 45), on decide, sans difficulté qu'un jugement défavorable à la demande principale n'empêche pas qu'il soit statué sur l'intervention.

En effet, l'intervention d'un tiers dans une instance n'a pas toujours pour objet de soutenir l'action principale; elle tend souvent à des intérêts particuliers, et forme ainsi une action différente et nouvelle, d'où il faut conclure que si le demandeur principal succombe, le tribunal n'en doit pas moins examiner les droits de l'intervenant.

S'il s'agit du rejet de la demande principale par un moyen de nullité ou par une fin de non-reçevoir, les opinions se divisent.

The head note in *The Atlantic & North-West Railway Co.* v. *Turcotte*(1), would give the impression that the contrary doctrine was laid down there, but Bossé J. speaking for the court, at page 319, makes practically the same distinction as Carré & Chauveau, *loc. cit.* Mr. Justice Bossé said:

Ce n'est plus le cas d'une partie qui réclame sa chose dans un litige régulier devant un tribunal compétent entre deux autres parties qui se la disputent, et qui, en raison de son droit, se fait adjuger la propriété, objet du litige entre le demandeur et le défendeur. C'est le cas du tiers intervenant dans un litige qui, sans collusion entre les parties principales, est déclaré ne plus exister en raison d'un défaut d'autorisation de la part du demandeur principal, défaut d'autorisation équivalant au défaut de juridiction du tribunal pour décider sur cette même demande principale, et entrainant, partant, le même défaut de juridiction pour les demandes accessoires et leurs conséquences.

This case is one in which

la partie réclame sa chose dans un litige régulier devant un tribunal compétent entre deux autres parties qui se la disputent, et qui, en raison de son droit se fait adjuger la propriété, objet du litige entre le demandeur et le défendeur.

(1) Q.R. 2 Q.B. 305.

1906

COTÉ v. THE JAMES RICHARDSON CO.

The Chief Justice.

Here the proceeding in intervention is to all intents and purposes an action in revendication. *Miller* v. *Déchène*(1).

At the argument much reliance was placed upon *Allan* v. *Pratt*(2). In my opinion that judgment has no application in the present case. There the appeal was to the Privy Council from a judgment of the court of appeal for Quebec in a case in which the amount in dispute, that is to say, the amount of the judgment appealed from was $1,100 while the amount of the original demand was $5,000.

The question of want of jurisdiction turned in that case entirely upon article 1178 of the Quebec Code of Civil Procedure, now article 68, C.P.Q., which enacts that the judgment of the court of appeal of the province shall be final in all cases where the matter in dispute shall not exceed the sum or value of five hundred pounds sterling. Their Lordships held that in determining the question of the value of the matter in dispute upon which the right to appeal depends the correct course to adopt is to look at the judgment as it affects the interests of the parties who are prejudiced by it and who seek to relieve themselves from it by an appeal. But that rule does not apply to this court. 54 & 55 Vict. ch. 25, sec. 3, sub-sec. 4, fixes the mode of determining the amount in controversy and if the appeal in *Allan* v. *Pratt*(2) had been taken to this court we undoubtedly would have had jurisdiction to hear it because the amount of the original demand $5,000 must have been held to be the amount in controversy. The same principle had been previously applied by the Privy Council in the case of *Macfarlane*

(1) 8 Q.L.R. 18.

(2) 13 App. Cas. 780.

v. *Leclaire*(1). If in this case Coté had, on the principal demand, obtained judgment for an amount exceeding $2,000, but if the value of the wood seized and claimed by The Richardson Company's intervention was only $1,000, Coté's interest under the rule in *Allan* v. *Pratt*(2) would be of an appealable amount, but would there be an appeal here in such circumstances? Here I would draw attention to the significant observation of Taschereau J. in *King* v. *Dupuis* (3), at page 394, where referring to the cases of *Champoux* v. *Lapierre*(4), and *Gendron* v. *McDougall*(5), relied on by the respondent at the argument on the question of jurisdiction, he says, at page 394:

> It was at that time, I may premise, though perhaps unnecessarily, the amount in controversy upon the appeal to this court that ruled not, as it is now, the amount of the original demand, when the extent of our jurisdiction depends upon the amount in controversy.

By sub-section 4 of 54 & 55 Vict. ch. 25, sec. 3, Parliament, for the first time, fixes a statutory mode of determining the amount in controversy which was that laid down in *Joyce* v. *Hart*(6); *Levi* v. *Reed*(7), and apparently uniformly acted upon in this court until *Allan* v. *Pratt*(2); *Gilbert* v. *Gilman*(8), per Taschereau J. at page 195. This last case was decided in 1888 and the statute 54 & 55 Vict. was passed in 1891.

In *Kinghorn* v. *Larue*(9), at page 349, Taschereau J., rendering the judgment of the court, adopted the

(1) 15 Moo. P.C. 181.
(2) 13 App. Cas. 780.
(3) 28 Can. S.C.R. 388.
(4) Cout. Dig. 56.
(5) Cout. Dig. 56.
(6) 1 Can. S.C.R. 321.
(7) 6 Can. S.C.R. 482.
(8) 16 Can. S.C.R. 189.
(9) 22 Can. S.C.R. 347.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

The Chief Justice.

rule laid down in *Macfarlane* v. *Leclaire*(1), and said:

> I am of opinion that this appeal must be quashed according to the well settled jurisprudence on this point, viz., that it is the interest of the party appealing from a judgment that has to be taken into consideration, to determine whether the case is appealable or not.

Further, at page 351 Taschereau J. says: "54 & 55 Vict. does not affect this case." In *Kinghorn* v. *Larue* (2) the amount demanded and the amount granted were, as Taschereau J. says, not different. Kinghorn having obtained judgment against Hall & Co. for $1,129 seized under a writ of execution certain immovable property which realized at the sale the sum of $950. Larue, a judgment creditor of the defendants for the sum of $24,000 was collocated as a creditor *au marc la livre* on this sum of $950, hence the appeal by Kinghorn, and there was nothing in issue either below or here except the right of Larue to be collocated. The amount of Kinghorn's judgment was not within the appealable limit nor was the amount of the collocation. The amount of Larue's claim was appealable, but was not in controversy and could not be in any way affected by any judgment this court could render. So clearly there was no appeal here and from a casual observation of Taschereau J. in such a case, I do not draw the conclusion that this court has decided that the statute was not intended to apply a rule by which the amount in controversy was to be fixed whether that amount was demanded in the original declaration which accompanied the writ of summons or in the conclusions to an opposition or intervention or other like judicial proceeding.

(1) 15 Moo. P.C. 181. (2) 22 Can. S.C.R. 347.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

The Chief Justice.

Taschereau J. says in *King* v. *Dupuis*(1), at page 396:

> I do not see how, on this appeal, (upon what is clearly a judicial proceeding, *Turcotte* v. *Dansereau* (2)), it can be denied that the matter in controversy, and demanded by that opposition, is of the value of $2,000 or over.

Turcotte v. *Dansereau*(2) is very much in point here. By the declaration the plaintiff claimed from the defendant the sum of $1,997.92 with interest and costs, but when the opposition was filed the amount due on the judgment which it sought to have annulled amounted to upwards of $2,000, and it was held by this court that an opposition filed for the purpose of vacating a judgment entered by default is a "judicial proceeding," and that the appellate jurisdiction of this court depended on the matter in controversy in that proceeding without reference to the amount demanded by the action in the principal suit.

It is not necessary that the amount in controversy should be a sum of money. The statute was intended to cover also the value of the thing demanded, the object being to give this court jurisdiction to hear and decide appeals in cases where the issues involved a consideration of sufficient value to justify the appeal.

In *King* v. *Dupuis*(1), at page 395, Taschereau J. says:

> Here it is the ownership of $3,500 worth of lumber that is in question (as in the present case); the appellant, by his opposition intervened in the original case to assert his right to this lumber that the respondent had caused to be seized.

On the whole I am of opinion that this court has jurisdiction to try the issue as to the ownership of the lumber and that *King* v. *Dupuis*(1) and *Turcotte* v. *Dansereau*(2) are authority for this opinion.

(1) 28 Can. S.C.R. 388. (2) 26 Can. S.C.R. 578.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

Girouard J.

GIROUARD J. (dissenting).—This appeal raises a very nice question of civil procedure upon which it is my misfortune to have to dissent from the court. I quite agree with the learned Chief Justice that an intervention, which I believe corresponds to the "interpleader" or "third party" proceedings of the English practice under the modern Judicature Acts, is a demand, and in a case like the present one, it is to a certain extent distinct from that formed by the plaintiff. I say to a certain extent, for by its conclusion the intervening parties pray that the seizure before judgment made by plaintiff be declared illegal, and in this respect I think the intervening parties take the position of defendants in the case. But whether that be correct or not, it seems to me it cannot be denied that this intervention, or distinct demand, does not constitute a new suit, but is a mere incident in a pending suit. If there was any doubt upon this point under the old law of France, there is none under the new Code of Civil Procedure of the Province of Quebec.

In order to better understand its provisions, I think it is not out of place to make a short recapitulation of the laws governing interventions.

The authority of Carré & Chauveau, Vol. 3, p. 214, Q. 1273, is invoked to establish that the withdrawal of the principal cause does not put an end to the intervention. This may not be important, for there may be several different demands in a pending suit, and because one of them is decided before another, it does not mean that they do not all exist in the same suit. But Carré & Chauveau, if I understand them well, do not absolutely hold that the withdrawal of the principal demand does not put an end to the intervention. They make distinctions. They quote decisions both

ways. And how can it be otherwise when we consider the legislation upon the subject in France under and before the Code?

The old ordinance of Civil Procedure of 1667, Tit. 11, has only one short article (art. 28) upon the subject of interventions, which has been reproduced by the Code of Civil Procedure of France. Article 339:

> L'intervention sera formée par requête qui contiendra les moyens et conclusions dont il sera donné copie ainsi que des pièces justificatives.

The only difference from the ordinance of 1667 is to be found in article 340:

> L'intervention ne pourra retarder le jugement de la cause principale, quand elle sera en état,

that is, ready for judgment.

Under these various provisions it is not surprising to find a very conflicting jurisprudence upon questions connected with interventions. The decisions will be found in Gilbert sur Sirey, Carré & Chauveau, and the other annotators and commentators of the Code of Civil Procedure of France. They are of very little assistance to us. For over fifty years, the Province of Quebec has been governed by a very different Code of Procedure.

The want of new provisions was felt as early as 1849, when 12 Vict. ch. 38, sec. 82, was passed, and amended in 1853 by 16 Vict. ch. 194, sec. 22. These enactments are summarized in the Consolidated Statutes of Lower Canada, ch. 83, sec. 71. Under these statutes one decision was rendered by the court of appeal which I believe deserves some attention. That is *Mulholland* v. *Benning*(1) decided in 1864 by

(1) 15 L.C.R. 284.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

Girouard J.

Duval C.J., Meredith, Drummond, Mondelet and Badgley JJ., where it was held, reversing the judgment of Mr. Justice Smith in the Superior Court, that the withdrawal of the principal action did not put an end to an intervention filed for the purpose of revendicating the thing seized by the plaintiff.

In 1867 more complete enactments were introduced by the Code of Civil Procedure, articles 154-158. These articles form part of chapter 4, relating to "Incidents" in a pending suit. It is, I believe, the first time that the legislature did so declare, although it is pretty hard to conceive that an intervention could be anything else, as the very word means, that is, *inter venire,* to come between.

The provisions of the new Code are more comprehensive and more precise than any legislation we had before; in fact they are all given as new law, or amending the old law.

Article 220:

Every person interested in an action between other parties may intervene therein at any time before judgment. C.C.P. 154 amended 156, in part.

Article 222:

It cannot stay the proceedings in the principal action unless it is allowed by the judge. *New* C.C.P. 156.

Article 224:

The proceedings are subject to the same rules as the action during which they are made, and the delays for pleading are computed from the date of the service of the intervention. *New* C.C.P. 158 amended.

If an intervention is a mere incident, it seems to me impossible to conceive that it can survive the principal demand. The above articles shew that two causes then exist in a pending suit, that is the princi-

pal cause or the demand of the plaintiff, and the intervention. And so the Quebec courts have held even under the old code of 1867.

In 1884, Mr. Justice Torrance decided that where the principal action is of a summary nature, the proceedings on an intervention therein are governed by the same rules: *Stephen* v. *Montreal, Portland & Boston Rly. Co.*(1).

In 1890, Mr. Justice Mathieu decided that the contestation of an intervention, and the merits of the principal cause must be adjudged at the same time: *Stein* v. *Bourassa*(2).

Finally, in 1892, the court of appeal, Baby, Bossé, Blanchet, Hall and Würtéle JJ., held that where the principal action is dismissed for an irregularity, the intervention must likewise disappear, whatever may be the grounds on which it is based, the court holding that it does not introduce a new suit or *instance,* but that it is only an appendix to the principal demand: *The Atlantic and North-West Rly. Co.* v. *Turcotte*(3).

For these reasons, interventions, although constituting judicial demands, and subject to the same rules of procedure as the principal demand, are mere incidents in the principal suit, like incidental and cross demands, improbations, *inscriptions de faux,* disavowals of attorneys, and *reprises d'instance.* Articles 216, 219, 228, 233, 257, 271, C.P.Q. All these may happen in the same suit. In fact the case of *The Atlantic & North-West Co.* v. *Turcotte*(3) is an example of three or four incidents upon which issues were joined. The practice has been to dispose of them all by one final judgment as was done in this case.

(1) 7 Legal News 62. (2) 18 R.L. 484.
(3) Q.R. 2 Q.B. 305.

1906

COTÉ v. THE JAMES RICHARDSON CO.

Girouard J.

Even oppositions to judgment or to seizure and sale, or upon the distribution of moneys, known as oppositions *afin d'annuler, afin de charge, afin de distraire* or *afin de conserver,* which admittedly form distinct demands, are not incidents of the principal action (1), but they are so intimately connected with it that they bear the same title, the name of the opposant being only added. They are always the inevitable sequence of the judgment or of its execution; they constitute what may be called the last phase of the same law suit. All the parties in the original cause are entitled to a notice from the opposant that the opposition has been returned by the seizing officer, and they are all entitled to be heard and to have the same rejected or dismissed upon proper issues. Articles 650, 651, 653 C.P.Q.

Finally, in determining the actual interest of the party contesting an opposition, due regard is always had to the judgment he is endeavouring to execute. It is especially when estimating the appealable interest of a plaintiff in the main action, that courts of justice have invariably looked at the final judgment, irrespective of the interest of the opposing party, a proposition which the decisions quoted hereafter will amply demonstrate.

These observations will help us, I hope, to reach an intelligible interpretation of our statutes granting the right of appeal.

It is enacted by 12 Vict. ch. 39, sec. 82 (1849), that where

> the right of appeal from any judgment of any court is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different.

(1) Arts. 653, 751, C.P.Q.

This enactment is substantially reproduced in article 1142 of the Code of Procedure of 1867, and, article 44 of the Code of 1897.

By 34 Geo. III. ch. 6, sec. 30, and 12 Vict. ch. 37, sec. 19, an appeal lies in several cases to His Majesty in His Privy Council, and among others "where the *matter in dispute* exceeds £500 sterling." This enactment is re-enacted in the code of 1867, art. 1178, and in the code of 1897, art. 68.

In 1851, in *Gugy* v. *Gugy*(1), the court of appeal, composed of Sir James Stuart C.J., and Rolland, Panet and Aylwin JJ., four of the ablest judges who adorned the Quebec Bench, held that the right of appealing to the Privy Council from a judgment upon an opposition made by the defendant to judgment, is settled by the nature and quality of the principal demand. The defendant, opposant, had alleged that the principal sum had been compensated by a sum due to him by the plaintiff, and far exceeding £500.

Sir James Stuart said:

Dans la présente cause, le jugement fut rendu pour une somme de £200, pour laquelle l'intimée fit émaner un bref (*writ*) d'exécution, et c'est sur une opposition faite à cette exécution par l'appelant qu'appel a été interjetté. L'exécution ici est la demande, et l'opposition n'est qu'une exception à cette demande.

The same principle has been adopted by article 1173 of the Code of Procedure.

"The Supreme Court Act," as amended and now in force, section 29, sub-section 1, in so far as it relates to the amount involved, says:

No appeal shall lie under this Act from any judgment rendered in the Province of Quebec, in any action, suit, cause, matter or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars.

(1) 1 L.C.R. 273.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

Girouard J.

And in sub-section 4, added by 54 & 55 Vict. ch. 25, sec. 3, sub-sec. 4, the Act adds:

> 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.

It seems to me that only sub-section 1 applies to this case, as there is no difference between the amount demanded and the amount recovered. The appellant obtained a judgment for exactly the full amount of his demand.

I take it for granted that our own decisions, especially a long array of them, are binding upon us, especially when they follow those of the Privy Council. I do not hesitate to say, with due deference, that if we receive this appeal we reverse the well settled jurisprudence, not only of the Quebec courts, but also of this court and of the Privy Council.

It is contended that such a conclusion is supported by the authority of *Turcotte* v. *Dansereau*(1), and *King* v. *Dupuis*(2).

I cannot understand how *Turcotte* v. *Dansereau*(1) can be invoked at all. The appellant was not the plaintiff, but the defendant, whose interest was calculated at the time of the making of his opposition to judgment. Our decision was not based on the fact that the amount was not sufficient. Quite the reverse. Interest was allowed to make up the appealable amount, as the Privy Council had done in *Boswell* v. *Kilborn* (3), and *Bank of New South Wales* v. *Owston*(4). *Turcotte* v. *Dansereau*(1) may be at variance with *Gugy* v. *Gugy*(5), but this does not help the present appellant, as he is not an opposant to judgment.

(1) 26 Can. S.C.R. 578.
(2) 28 Can. S.C.R. 388.
(3) 12 Moo. P.C. 467.
(4) 4 App. Cas. 270.
(5) 1 L.C.R. 273.

In *King* v. *Dupuis*(1), which is a case somewhat similar to this one, a lumberman by the name of King was opposing by an opposition *afin de distraire,* the seizure and sale of a certain quantity of logs of the value of $3,500. The plaintiff, Dupuis, had obtained judgment for the amount of his demand, namely, $119.50. We decided that King could appeal, but we did not decide that the plaintiff, Dupuis, could, the point not being even involved in the case. Mr. Justice Taschereau, who rendered the judgment of the court, refers to the decisions in *McCorkill* v. *Knight*(2); *Kinghorn* v. *Larue*(3), and *Macfarlane* v. *Leclaire*(4), and when we read the judgments in these cases there cannot be any doubt what the learned judge had in his mind. His Lordship has in fact recapitulated the whole jurisprudence in *Kinghorn* v. *Larue*(3), which is a case exactly in point. The question of appeal came up on an opposition *afin de conserver,* which is a judicial proceeding or demand, perhaps more independent of the main action than any other opposition. It was contested by the plaintiff who had obtained judgment for $1,129, and the opposition was for $24,000. It was held that the plaintiff had no appeal. Mr. Justice Taschereau, for the court, said:

> Here the appellant's judgment is for $1,129, and to that amount and that amount alone, is he pecuniarily interested in the present case. The case of *Gendron* v. *McDougall* (5) is clearly in point. In that case Gendron had obtained a judgment against one Ogden for $231, and in execution thereof seized an immovable worth $2,000. McDougall filed an opposition *afin de distraire,* claiming the land so seized as his property. Gendron contested the opposition. The Court of Queen's Bench dismissed his contestation and maintained McDougall's opposition. Gendron then appealed to the Supreme Court, but, though the question at issue on McDougall's opposition was one

(1) 28 Can. S.C.R. 388.
(2) 3 Can. S.C.R. 233; Cout. Dig. 56.
(3) 22 Can. S.C.R. 347.
(4) 15 Moo. P.C. 181.
(5) Cout. Dig. 56.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

Girouard J.

of title to a piece of land, and that piece of land was worth $2,000, this court quashed Gendron's appeal, on the ground that his pecuniary interest on his appeal was limited to $231, the amount of his judgment. That case, which is binding upon us, seems conclusive upon the question.

And referring to the case of *Macfarlane* v. *Leclaire*(1), the learned judge observes that the Privy Council intimated, though, of course, without determining, that had the judgment been against Leclaire, a party just in the position of the present appellant, and of Kinghorn, Leclaire would not have had a right to appeal, as his pecuniary interest would not amount to £500 sterling. Finally, the learned judge concludes:

> The statute 54 & 55 Vict. does not affect this case. This is not a case where the amount demanded and the amount granted are different.

In *Allan* v. *Pratt*(2), an appeal decided in 1888 from the Quebec court of appeals, Lord Selborne said:

> Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane* v. *Leclaire*(1), that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal.

True, *Allan* v. *Pratt*(2), in so far as this court is concerned, is no longer law in a similar case, that is, where the amount demanded is different from that recovered. This change has been effected in 1891 by 54 & 55 Vict. ch. 25. But out of the special case provided

(1) 15 Moo. P.C. 181. (2) 13 App. Cas. 780.

1906

COTÉ v. THE JAMES RICHARDSON CO.

Girouard J.

for by that statute, I cannot see that the general principle affecting the right to appeal, as laid down by the Privy Council, is not yet sound. Until the Privy Council declares the contrary, I do not intend to doubt its meaning and jurisprudence, especially in face of *Beauchemin* v. *Armstrong*(1) decided by this court in 1904. The action of Armstrong was for $2,217 and was dismissed by the trial court, whose judgment was confirmed in appeal, except as to certain costs amounting to $631, which were ordered to be borne by the defendant. The plaintiff acquiesced in this judgment. On appeal to this court by the defendant, which was quashed for want of jurisdiction, Chief Justice Taschereau, speaking for the court, said:

> This is not a case where the amount demanded originally governs as to the jurisdictional pecuniary limitation under sub-section 4 of section 29 of the "Supreme Court Act," but it is a case falling within the decision of the Privy Council in *Allan* v. *Pratt*(2), which was followed by this court in the case of *Monette* v. *Lefebvre* (3)
>
> The interest of the party appealing is for a sum less than $2,000, and, therefore, the appeal must be quashed.

The principal laid down in *Macfarlane* v. *Leclaire* (4) also clearly covers this case. Lord Chelmsford said:

> In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the judgment as it affects the interests of the parties who are prejudiced by it, and who seek to relieve themselves from it by an appeal. If their liability upon the judgment is of an amount sufficient to entitle them to appeal, they cannot be deprived of their right because the matter in dispute happens not to be of equal value to both parties; and, therefore, if the judgment had been in their favour, their adversary might possibly have had no power to question it by an appeal.

(1) 34 Can. S.C.R. 285.
(2) 13 App. Cas. 780.
(3) 16 Can. S.C.R. 387.
(4) 15 Moo. P.C. 181.

1906

COTÉ
v.
THE JAMES RICHARDSON CO.

Girouard J.

In the present case only one judgment was rendered maintaining the plaintiff's demand for $804.49, quashing his *saisie-arrêt,* maintaining the intervention and declaring the respondents proprietors of the lumber so seized, admitted to be of the value of about $4,000.

It is suggested that the plaintiff, now appellant, represents the mass of the creditors. He does not so far, because he has not alleged insolvency or *déconfiture* of the defendant. The creditors are not parties to this case in any shape or form. We do not even know that there are other creditors. The allegation that the defendant, Dionne, has been secreting his goods

> avec l'intention de frauder ses créanciers en général et le démandeur en particulier,

is not sufficient to put creditors in the case for distribution *pro ratâ*: Arts. 673, 694 C.P.Q. The plaintiff represents only himself, and to the extent of his judgment, that is $804.49, and nothing more. Moreover,—Where is the proof that the interest of all the creditors, if others exist, amounts to $2,000?

For these reasons I am of opinion that the motion to quash should be granted, and the appeal dismissed with costs.

Motion dismissed with costs.

Solicitor for the appellant: *Auguste Beaudry.*
Solicitor for the respondents: *A. S. Garneau.*

On the 29th of November, 1906, the appeal was heard upon the merits.

Flynn K.C. appeared for the appellant.

Stuart K.C. and *Garneau K.C.* appeared for the respondents.

On the 29th of November, 1906, upon an equal division of opinion among the judges, the appeal stood dismissed without costs.

Appeal dismissed without costs.