PAUL COUTURE (DEFENDANT).....APPELLANT; 1892

AND *Oct. 4.
*Nov. 3.

DIOS BOUCHARD (PLAINTIFF)..... ....RESPONDENT.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT FOR LOWER CANADA (SITTING IN REVIEW).

Supreme and Exchequer Courts Amending Act, 1891—54-55 *Vic. ch.* 25 *s.* 3—*Appeal from Court of Review—Case standing over for judgment—Amount necessary for right of appeal—Arts.* 1178 *&* 1178*a C. C. P.*

In an action brought by respondent against the appellant for $2,006 which was argued and taken *en délibéré* by the Superior Court sitting in review on the 30th September, 1891, the day on which the Act 54 & 55 Vic. ch. 25 s. 3 giving a right to appeal from the Superior Court in review to the Supreme Court of Canada was sanctioned, the judgment was rendered a month later in favor of the respondents. On appeal to the Supreme Court of Canada:

Held, per Strong, Fournier and Taschereau JJ. that the respondent's right could not be prejudiced by the delay of the court in rendering judgment which should be treated as having been given on the 30th September, when the case was taken *en délibéré*, and therefore the case was not appealable. *Hurtubise* v. *Desmarteau*, (19 Can. S. C. R. 562,) followed.

Per Gwynne and Patterson JJ.—That the case did not come within the words of s. 3 ch. 25, 54 & 55 Vic. inasmuch as the judgment, being for less than £500 sterling, was not a judgment from which the appellant had a right to appeal to the Privy Council in England. Arts. 1178, 1178*a* C. C. P.

APPEAL from a judgment of the Superior Court for Lower Canada sitting in review unanimously confirming the judgment of the Superior Court for the sum of $2,006 in favour of the respondent.

The appellant was sued for a sum of $2,006 and arrested under a writ of capias, in virtue of articles 796 *et seq.* of the Code of Civil Procedure.

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*PRESENT:—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

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The judgment of the Superior Court was delivered on the 31st August, 1891, and was inscribed in review on the 8th of September and argued and taken *en délibéré* on the 30th September, 1891. Judgment was pronounced some weeks later by the Superior Court sitting in review.

From this judgment the appellant appealed direct to the Supreme Court of Canada, under the Supreme and Exchequer Courts Amending Act, 1891, 54 & 55 Vic. ch. 25 s. 3 ss. 3. The section reads as follows:—

"3. Provided that such appeals shall lie only from the Court of Queen's Bench, or from the Superior Court in review in cases where, and so long as, no appeal lies from the judgment of that court when it confirms the judgment rendered in the court appealed from, which by the law of the Province of Quebec, are appealable to the Judicial Committee of the Privy Council."

Casgrain Q.C., Attorney General of Quebec, for respondent: The case was argued on the day on which the act was passed and upon the principle that *actus curiæ neminem gravabit* I contend the judgment must be held to have been delivered on the 30th September, 1891, and if so *Hurtubise* v. *Desmarteau* (1) decided by this court, applies.

Moreover the case is not appealable, the amount not being for £500 sterling, as regulated by art. 1178 C. C. P.

Pelletier for appellant: The jurisprudence in the Province of Quebec has always been to consider the date of the judgment and not the day of the argument for all purposes of appeal. See art. 483, C. C. P. As to the amount it is over $2,000, and comes within the very terms of the Supreme and Exchequer Courts Act, R. S. C., ch. 135, and the Parliament of Canada alone has jurisdiction to regulate the amount which is appealable to this court.

(1) 19 Can. S.C.R. 562.

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STRONG J. stated that he had read Mr. Justice Taschereau's judgment and that he concurred with him.

FOURNIER J.—Il s'élève en cette cause une importante question concernant la juridiction de cette cour, c'est de savoir, si l'on peut appuyer le jugement sur une loi qui n'a été sanctionnée que le même jour que cette loi a été adoptée.

Les faits sont ainsi qu'il suit: l'appelant était demandeur pour la somme de $2,006 devant la cour Supérieure à Chicoutimi, qui a rendu jugement pour la somme de $684.14, le 31 août 1891. Porté en appel devant la cour Supérieure siégeant en revision à Québec, le 8 septembre 1881, ce jugement a été confirmé le 30 septembre 1891. Ce même jour était sanctionné le statut 54 & 55 Vic. ch. 25, amendant la juridiction de cette cour de manière à permettre l'appel ici dans des causes décidées en revision qui n'y étaient pas appelables auparavant, savoir: celles dans lesquelles le jugement en première instance avait été confirmé.

En conséquence du jugement de confirmation cette cause ne pouvait être portée en appel à la cour du Banc de la Reine. Il ne restait que l'appel au Conseil Privé si le montant était suffisant. Mais la demande qui n'était d'abord que de $2,006, et le jugement qui d'après la jurisprudence du Conseil Privé doit servir de bâse pour régler le droit d'appel, n'étant que de $684.14, la cause n'y était pas appelable.

Privé du droit d'appel à la cour du Banc de la Reine et au Conseil Privé l'appelant a pensé que la 54 & 55 Vic. ch. 25 lui offrait un moyen de sortir de difficulté en lui ouvrant l'appel à cette cour.

En effet, une disposition de ce statut a introduit un important changement dans le droit d'appel. Il fallait auparavant que la demande fut au moins de $2,000.

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Un jugement de cette cour avait même décidé, comme au Conseil privé, que ce serait le montant adjugé et non celui demandé qui servirait de bâse au droit d'appel. Mais ce principe a été rejeté par le statut ci-haut cité, qui a déclaré (sec. 3 ss. 4,) que lorsque le droit d'appel dépend du montant en litige, ce montant sera estimé être celui demandé et non celui obtenu, s'ils sont différents.

La demande de l'appelant étant au-delà de $2,000, savoir : de la somme de $2,006, il a cru que la voie lui était ouverte pour l'appel à cette cour. Mais il se trouve encore un malheureux obstacle dans son chemin, il se trouve trop tôt pour bénéficier de la loi.

Il est de principe qu'une cause soumise à la considération de la cour pour jugement et qui est réservée pour considération ou prise en délibéré, doit, quelle que soit la date du jugement rendu plus tard, être jugée d'après la loi en force, lorsque la cour, après audition des parties, a été saisie de la cause. L'application de ce principe ruine les espérances de l'appelant. La cour a été saisie de la cause le 30 septembre et les parties ont droit à leur jugement d'après la loi, telle qu'alors en force ; mais c'est ce jour-là même que par la sec. 3 ss. 4 la cause a été rendue appelable en déclarant que l'appel serait désormais réglé par le montant demandé et non celui obtenu.

Une cause absolument semblable a déjà été décidée dans cette cour. C'est celle de *Hurtubise* v. *Desmarteau* (1). D'autres causes ont aussi été jugées d'après le même principe, comme on le voit par les autorités citées dans le rapport.

Il est d'autant plus regrettable que l'appel ne puisse avoir lieu qu'il s'agit d'une cause où la liberté du sujet est mise en question. L'appelant a été arrêté

(1) 19 Can. S.C.R. 562.

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sur *cap. ad resp.* et sera privé de sa liberté, tant qu'il ne pourra payer son jugement.

Ne serait-il pas plus raisonnable d'accorder l'appel dans un cas semblable que dans beaucoup d'autres où il ne s'agit que de sommes insignifiantes dues à titre de rentes annuelles, honoraires d'office, etc. Il faut espérer que cette anomalie va bientôt disparaître de nos codes.

TASCHEREAU J.—This case comes up on a motion to quash for want of jurisdiction. The motion must be allowed. The ruling in *Hurtubise* v. *Desmarteau* (1) applies here. It is true that the judgment appealed from here was in fact pronounced in the Court of Review after the coming into force of the act 54 & 55 Vic., ch. 25, which allows for the first time appeals from that court; but, as regards this appeal, the case having been put *en délibéré* on the 30th September, 1891, on the very day that the act was sanctioned, the judgment is to be treated as if it had been given on that day, on the principle *actus curiæ neminem gravabit.* Nothing that happens after the case is *en état* can alter in any way the rights or position of the parties. It cannot be that a judge can render a case appealable or not at his will by simply delaying or hastening the judgment thereon.

I refer to the following authorities: *Lawrence* v. *Hodgson* (2) in which Garrow B. says:

Where a case stands over for judgment the party ought not to be prejudiced by that delay, but should be allowed to enter up his judgment retrospectively, if necessary, to meet the justice of the case.

Freeman v. *Tranah* (3) where Cresswell J. says:

The maxim *actus curiæ neminem gravabit* is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law.

(1) 19 Can. S.C.R. 562. (2) 1 Y. & J. 372.
(3) 12 C. B. 415.

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And Maule J. says :

It is an established principle of law that the act of the court shall injure no one, such as the court's taking time to deliberate on its judgment.

And the writer's remarks on *Pinhorn* v. *Sonster* (1) in Maxwell on the Interpretation of Statutes (2) :

The judgment was, in strictness, due before the act, and the delay of the court ought not to affect it.

See also *Evans* v. *Rees* (3) ; *Green* v. *Cobden* (4) ; and *Miles* v. *Williams* (5).

I rest my judgment on that ground without expressing any opinion one way or the other on the ground relied upon by my brothers Gwynne and Patterson.

GWYNNE J.—I agree that this appeal should be quashed but upon the following grounds only, namely, that the judgment from which the appeal is taken was not one which this court has authority to entertain under the provisions of the Dominion statute, 54 & 55 Vic. ch. 125. inasmuch as it was not a judgment which the appellant had *de jure*, by the statute law of the Province of Quebec, a right of appeal to the Privy Council in England, the above statute of the Dominion authorizing in my opinion this court to entertain appeals from all judgments of the Court of Review thereafter delivered, affirming the judgment of the Superior Court in such cases only as were *de jure* appealable to the Privy Council.

I cannot concur in the opinion that upon a question of right to appeal a judgment delivered, it may be months after the day upon which the case is argued and judgment is reserved, shall be referred back to the day upon which the argument was closed so as to be deemed to have been delivered on that day. The logical

(1) 21 L. J. Ex. 336.
(2) 2 ed. p. 273.
(3) 12 A. & E. 167.
(4) 4 Scott 486.
(5) 9 Q. B. 47.

deduction from such holding, would be that the right to appeal might be barred by the time allowed for appealing from a judgment having elapsed before the judgment should be in point of fact delivered.

PATTERSON J.—This appeal being from a judgment of the Superior Court sitting in review cannot be heard by this court, unless the judgment is one which by the law of the Province of Quebec is appealable to the Judicial Committee of the Privy Council (1). The law of the Province of Quebec on the subject of appeal to the Privy Council is found in articles 1178 and 1178*a* of the Code of Procedure, and in cases like the present it confines the right of appeal to those wherein the matter in dispute exceeds the sum or value of £500 sterling. The sum or value in dispute in this action, which, according to the statute of 1891 we understand to be the amount demanded, or $2,000, is less than £500 sterling. This is a fatal objection to our jurisdiction and upon that ground I agree in quashing the appeal. The other objections, founded on the time when judgment was pronounced in its relation to the 30th of September, 1891, when the statute received the royal assent, have to be dealt with in one or two cases now standing for judgment. I therefore forbear to discuss them now, merely remarking that I do not assent to the proposition that a judgment, given after argument and after time taken for deliberation, relates back to the date of the argument as if given *nunc pro tunc*.

Appeal quashed with costs.

Solicitors for appellant: *Pelletier & Fontaine.*

Solicitors for respondent: *Casgrain, Angers & Lavery.*

(1) 54 & 55 Vic. ch. 25, sec. 3.