COWEN *v.* EVANS.
MITCHELL *v.* TRENHOLME.
MILLS *v.* LIMOGES.

1893

*May 2.
*June 24.

Jurisdiction—Right to appeal—54 & 55 Vic. c. 25 sec. 3 ss. 4—Amount in dispute—R.S.C. c. 135 sec. 29.

The statute 54 & 55 Vic. c. 25 sec. 3 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" does not apply to cases in which the Superior Court has rendered judgment, or to cases argued and standing for judgment *(en délibéré)* before that court, when the act came into force (30th September, 1891). *Williams* v. *Irvine* (22 Can. S. C. R. 108) followed.

In actions for damages claiming more than $2,000, the Court of Queen's Bench for Lower Canada on appeal in one case gave plaintiff judgment for $880, reversing the judgment of the Superior Court which had dismissed the actions, and in the other cases on appeal by the defendants, affirmed the judgments of the Superior Court giving damages for an amount less than $2,000.

Held, following *Monette* v. *Lefebvre* (16 Can. S. C. R. 387) that no appeal would lie to the Supreme Court in these cases by the defendants from the judgment of the Court of Queen's Bench under sec. 29 of c. 135 R. S. C. Gwynne J. dissenting.

COWEN v. EVANS.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) reversing the judgment of the Superior Court.

This was an action of damages brought by the respondent against the appellant for $3,050 in June, 1887. The case was *en délibéré* before the Superior Court on the 30th September, 1891, when the statute 54 & 55 Vic. c. 25 sec. 3 ss. 4, came into force enacting that the amount demanded and not that recovered should determine the right to appeal when the right to appeal is dependent upon the amount in dispute.

The Superior Court on the 5th December, 1891, dismissed the respondent's action.

* PRESENT :—Sir Henry Strong C.J., and Fournier, Taschereau, Gwynne and Sedgewick JJ.

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COWEN v. EVANS.

On appeal to the Court of Queen's Bench for Lower Canada (appeal side) the court on the 28th February, 1893, reversing the judgment of the Superior Court, granted $880 damages to the respondent with interest from the 16th June, 1887.

On appeal to the Supreme Court of Canada respondent moved to quash for want of jurisdiction;

Per Curiam. The statute 54 & 55 Vic. c. 25 sec. 3, did not apply to cases pending *en délibéré* before the Superior Court, on the 30th September, 1891, and as the amount of the judgment appealed from was under $2,000 the case was not appealable, following on the question of the nonretroactivity of the statute, *Williams* v. *Irvine* (1), and as to the amount in dispute, *Monette* v. *Lefebvre* (2).

GWYNNE J. dissenting:—It is impossible in my opinion that justice can be done between the parties to these suits unless the two cases (3) should be heard together as one consolidated case, and that as it appears to me is what should be done, and the appeal then heard. Although not formally consolidated in the court below the evidence applicable to both cases was taken in one. Both cases were argued together in the court below and judgment given in both cases at the same time, and by an order made on the appeals to this court the two cases have been ordered to be printed together. I am of opinion, therefore, that the appeals in the two cases should be consolidated and argued as appeal and cross appeal in one suit, as the only way by which justice can be done between the parties and all technical objection removed. The court surely cannot be so powerless as to be unable to put the cases into such a position that justice may be done.

R. C. Smith for motion.

J. S. Archibald Q.C. contra.

(1) 22 Can. S. C. R. 108. (2) 16 Can. S. C. R. 387.

(3) See *Cowen* v. *Evans* p. 328.

MITCHELL *v.* TRENHOLME.

1893

*May 2.
*June 24.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) confirming the judgment of the Superior Court for the District of Montreal.

Motion to quash for want of jurisdiction.

This was an action brought by the respondents on the 25th July, 1889, claiming $5,000 damages alleged to have been sustained by them by the production of a plea and incidental demand by appellants in a case before the Superior Court for the District of Montreal under number 528. The Superior Court on the 27th day of September, 1890, granted $300 damages to the respondents.

The appellants (defendants) then appealed to the Court of Queen's Bench, and that court, on the 28th day of February, 1893, confirmed the judgment of the Superior Court.

On appeal, the Supreme Court, following the decision of *Williams* v. *Irvine* (1) quashed the appeal for want of jurisdiction, holding that 54 & 55 Vic. c. 25, did not apply.

GWYNNE J. dissenting. No question as to a right of appeal arose in this case until the month of February, 1893, when the judgment of the Court of Queen's Bench was rendered, and when it did arise, sec. 2311, of the Revised Statutes of Quebec, was in force, which declares, in unmistakable language, that whenever the right to appeal is dependent on the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different. Here the amount demanded was $5,000. We are,

*PRESENT :—Sir Henry Strong C.J., and Fournier, Taschereau, Gwynne and Sedgewick JJ.

(1) 22 Can. S. C. R. 108.

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therefore, in my opinion, bound to conform to the provisions of the statute which declares what shall be the result of the event which has happened, and to declare that the appeal should be heard and the motion to quash dismissed.

J. S. Buchan for motion.

A. Delisle contra.

1893

*May 8.
*June 24.

MILLS *v.* LIMOGES.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment of the Superior Court granting to the respondent (plaintiff) one thousand dollars damages.

Motion to quash.

This was an action of damages for $5,000 brought for the death of a person by a consort. The Superior Court in April, 1891, granted $1,000 damages and the judgment was acquiesced in by the plaintiff, but defendant appealed to the Court of Queen's Bench and that court affirmed the judgment of the Superior Court on the 23rd December, 1892. The statute 54 & 55 Vic. c. 25 sec. 3 ss. 4, declaring 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," was sanctioned 30th September, 1891.

Per Curiam. 54 & 55 Vic. did not apply to such a case, and that the case was not appealable under R S. C. ch. 135 s. 29, the amount in dispute being under $2,000. *Monette* v. *Lefebvre* (1) and *Williams* v. *Irvine* followed (2).

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*PRESENT :—Sir Henry Strong, C.J. and Fournier, Taschereau, Gwynne and Sedgewick JJ.

(1) 16 Can. S. C. R. 357.

(2) 22 Can. S. C. R. Q. 61.

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Gwynne J.

GWYNNE J. dissenting:—

No question as to the right of appeal arose in this case until the 23rd December, 1892. At that time sec. 2311 R. S. Q. was in force, which declares that "whenever a right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded and not that recovered." We are in my opinion governed by the above section of the Revised Statutes, which declares what shall be done in the event which has happened, and I can see no reason for not conforming to the provisions of that section. I am therefore of opinion that the appeal lies and should be heard.

*Appeals quashed with costs.**

H. Abbott Q.C. and *E. Lafleur* for appellants.

P. Demers for respondent.

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*N.B.—In the October session, 1893, the appeal in *The Montreal Street Railway Co.* v. *Carrière*, in which an action for $5,000 damages was dismissed by the Superior Court prior to the passing of 54 & 55 Vic. c. 25, but maintained by the Court of Queen's Bench on 26th April, 1893, for $600, was also quashed for want of jurisdiction, following this case of *Cowen* v. *Evans*.