1903

*Dec. 2.
*Dec. 9.

ANTONIA WINTELER (PLAINTIFF) } APPELLANT;

AND

RANDALL J. DAVIDSON AND OTHERS (DEFENDANTS)..... } RESPONDENTS;

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

Appeal—Jurisdiction—Amount in controversy—Future rights.

Though the amount in controversy on an appeal from the Province of Quebec may exceed $2,000, yet if the amount demanded in the action is less, the Supreme Court of Canada has no jurisdiction to entertain the appeal.

In an action *en séparation de corps*, the decree granted $1,500 per annum as alimony to the wife and, her husband having died, she brought suit to enforce the judgment as executory against his universal legatees. Judgment having been given against her by the Court of King's Bench, she sought an appeal to the Supreme Court of Canada.

Held, that the further payments to which she would have been entitled had she been successful in her suit were not "future rights" which might be bound within the meaning of R. S. C., ch. 135, sec. 29.

APPEAL from a decision of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court in favour of the plaintiff.

The material facts of the case are stated in the above head-note, the only question between the parties being whether or not the plaintiff could enforce a decree obtained against her deceased husband for alimony, against his executors and universal legatees, the annuity having been paid to her for several years and less than one year's payment being due when the suit was commenced.

*PRESENT: — Sir Elzéar Taschereau C.J. and Girouard, Davies, Nesbitt and Killam JJ.

1903

WINTELER v. DAVIDSON.

Lafleur K.C. for the respondents, moved to quash the appeal, citing *La Banque du Peuple* v. *Trottier* (1); *Rodier* v. *Lapierre* (2); *O'Dell* v. *Gregory* (3); *Raphael* v. *Maclaren* (4).

Hibbard contra. If we succeed on this appeal we will be entitled to over $3,000 which is more than the Act requires to entitle us to an appeal. Moreover, future rights are bound by the judgment. See *Donohue* v. *Donohue* (5); *Turcotte* v. *Dansereau* (6).

The judgment of the court was delivered by:

THE CHIEF JUSTICE:—This is a motion by respondents to quash the appeal for want of jurisdiction.

The case is presented upon the following admitted facts.

In June 1891, the late Thomas Davidson was condemned by a judgment of the Superior Court to pay to his wife, the present appellant, during her life time, an annuity of $1,500 in quarterly payments of $375. Davidson died in November 1901. The respondents are his universal legatees; and the appellant claims the right to execute against them her said judgment against her late husband for the instalments of her annuity accrued since his death.

A joint case to have her contentions judicially determined was agreed upon between the parties under secs. 509 *et seq.* of the Code of Procedure, and submitted to the Superior Court in February 1902. After hearing the parties, the Court, in October 1902, upheld the appellant's contention, but the Court of King's Bench reversed that judgment and declared that the respondents were not liable for her said annuity. She now brings the present appeal from that judgment of

(1) 28 Can. S. C. R. 422.
(2) 21 Can. S. C. R. 69.
(3) 24 Can. S. C. R. 661.
(4) 27 Can. S. C. R. 319.
(5) 33 Can. S. C. R. 134.
(6) 26 Can. S. C. R. 578.

1903

WINTELER v. DAVIDSON.

The Chief Justice.

the Court of King's Bench. The respondents move to quash it on two grounds: 1st. That no appeal lies from decisions or judgments rendered under the said sections of the Code of Procedure, citing *Attorney General of Nova Scotia* v. *Gregory* (1); *Canadian Pacific Railway Co.* v. *Fleming* (2); *Union Colliery Co.* v. *Attorney General of British Columbia* (3). See also *The City of Halifax* v. *Lithgow* (4):—2ndly. That, in this case, the amount originally demanded by the appellant from them, and then in controversy, was less than $2,000 and that, therefore, the case is not appealable, though the amount for the instalments of the said annuity accrued since the date of the submission to the Superior Court would now exceed $2,000.

The motion to quash has to be allowed upon this last ground; it is unnecessary, therefore, to pass upon the first ground.

The statute is clear that as to Quebec appeals when the right of appeal is dependent upon the amount in dispute, as in this case, such amount must be understood to be the amount demanded and not the amount recovered and in controversy upon the appeal, if they are different. It is not the amount *involved* that governs but the actual amount originally in controversy in the case between the parties

So that in a case where the amount originally demanded exceeded $2,000, but where the amount recovered was but $100, as we had lately in the case of *Coghlin* v. *La Fonderie de Joliette*, (5) for instance, we have jurisdiction, though the amount in controversy on the appeal is but $100. And, *a converso*, in a case where the amount demanded was under $2,000, but the amount in con-

(1) 11 App. Cas. 229.
(2) 22 Can. S. C. R. 33.
(3) 27 Can. S. C. R. 637.
(4) 26 Can. S. C. R. 336.
(5) 34 Can. S. C. R. 153.

troversy on the appeal here is over that sum, say for accrued interest or, as in this case, for instalments accrued since the date of the action, the case is not appealable. In both cases it is the amount originally demanded that governs. *Dufresne* v. *Guevremont* (1); *The Citizens' Light & Power Co.* v. *Parent* (2).

Now here, the pecuniary amount of the appellant's claim at the date of the stated case or submission to the Superior Court, three months only after her husband's death, was less than $2,000 and the submission must be taken as an action of that date. Consequently, the amount originally demanded by her being less than $2,000, no appeal lies from the judgment of the Court of King's Bench, though the amount of the instalments of her annuity accrued since her original demand now exceeds $2,000.

The appellant further contended at bar that her appeal lies on the ground that future rights are involved in the controversy, because, as argued in support of that contention, the judgment of the Court of King's Bench, irrespectively of amount, will in the future be *res judicata* against her claim. But the constant jurisprudence of the Court militates against that contention. An action claiming the right to an annuity is not appealable. In fact, it is not the amount that is in controversy here. It is the abstract right to the annuity. The amount would be but the consequence of the judgment if the appellant succeeded in having her judgment against her late husband declared executory against the respondents. I refer to amongst others: *Chagnon* v. *Normand* (3); *Rodier* v. *Lapierre* (4); *O'Dell* v. *Gregory* (5); *Macdonald* v. *Galivan* (6); *La Banque du Peuple* v. *Trottier* (7); *Talbot* v. *Guilmartin*

(1) 26 Can. S. C. R. 216.
(2) 27 Can. S. C. R. 316.
(3) 16 Can. S. C. R. 661.
(4) 21 Can. S. C. R, 69.
(5) 24 Can. S. C. R. 661.
(6) 28 Can. S. C. R. 258.
(7) 28 Can. S. C. R. 422.

1903

WINTELER v. DAVIDSON.

The Chief Justice.

(1); Comp. *Brown* v. *The Dominion Salvage and Wrecking Co.* v. *Brown* (2); *In re Marois* (3).

A case that is not appealable and a case appealable but not appealed from, are on the same footing as to *res judicata*. If the simple fact that a judgment is *res judicata* when any *solvendum in futuro* is affected by it, made it appealable, an appeal would lie in every such case even where the payments in future would amount to less than $2,000. But that is not so where as in this case the amount in controversy, the *debitum in præsenti* is the criterion of our jurisdiction. And where rights in future are involved in support of the right of appeal, they must not be, under the authorities above quoted, merely personal rights as the appellant's here clearly are.

The motion to quash must be allowed with costs.

Appeal quashed with costs.

Solicitor for the appellant: *F. W. Hibbard.*

Solicitors for the respondents: *Lafleur, MacDougall & MacFarlane.*

---

(1) 30 Can. S. C. R. 482. (2) 20 Can. S. C. R. 203.
(3) 15 Moo. P. C. 189.