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*Jan. 20, 21.

*April 16.

DUNCAN MACDONALD..... APPELLANT;

AND

HARRY ABBOTT.....RESPONDENT.

ON APPEAL FROM THE COURT OF REVIEW FOR THE PROVINCE OF QUEBEC.

Security for costs of appeal—Supreme and Exchequer Court Act, sec. 31—Supreme Court Rule 6—Court of Review (P. Q.), no appeal direct from.

The following certificate was fyled with the printed case, as complying with Rule 6 of the Supreme Court Rules: "We, the undersigned, joint prothonotary for the Superior Court of *Lower Canada*, now the Province of *Quebec*, do hereby certify that the said defendant has deposited in our office, on the twentieth day of November last, the sum of five hundred dollars, as security in appeal in this case, before the Supreme Court, according to section (31) thirty-first of the *Supreme Court Act*, passed in the thirty-eighth year of Her Majesty, chapter second.—*Montreal*, 17th January, 1878.

Signed, "HUBERT, HONEY & GENDRON, P. S. C."

(1) 16 L. C. Jur. 80.

* PRESENT.—Ritchie, C. J., and Strong, Fournier, Henry and Taschereau, J. J.

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Held,—On motion to quash appeal, that the deposit of the sum of $500, in the hands of the prothonotary of the Court below, made by appellant, without a certificate that it was made to the satisfaction of the Court appealed from, or any of its judges, was nugatory and ineffectual as security for the costs of the appeal.

Per *Taschereau*, J., the *case* should be sent back to the Court below in order that a proper certificate might be obtained.

Per *Strong* and *Taschereau*, J. J.,—That an appeal does not lie from the Court of Review (P.Q.) to the Supreme Court of *Canada*. [*Henry*, J., *contra*.]

MOTION to quash appeal.

The judgment appealed from was rendered by the Court of Review (P.Q.) sitting at *Montreal*, on the 29th September, 1877.

On the 22nd October, 1877, a motion for leave to appeal to the Supreme Court of *Canada* was made; on the 14th of the same month the motion was granted, the 20th November, 1877, being finally set down as the day upon which the amount and nature of the security should be adjudged. On the 20th November, 1877, appellant deposited in the hands of the prothonotary of the Superior Court for the district of *Montreal* $500. On the 5th December, 1877, execution was taken out by plaintiff, and defendant fyled an opposition *a fin d'annuller*, with an affidavit that the $500, deposited on the 20th November, 1877, were as security for the costs of the Superior Court, as appeared by the following certificate: "We, the undersigned, joint prothonotary of "the Superior Court for *Lower Canada*, district of *Mon-* "*treal*, do hereby certify that the said defendant de- "posited in our office on the 20th day of November "last, the sum of five hundred dollars as security for "costs in this cause.

"Given at *Montreal* this fifth day of December, 1877.

(Signed,) "HUBERT, HONEY & GENDRON,
"P. S. C."

On the 17th January, 1878, appellant procured from

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the prothonotary the certificate given above in the head note, and fyled it with the printed *case* as complying with the 6th Rule of the Supreme Court Rules.

Mr. *Bethune*, Q. C., for respondent:

The respondent moves to quash this appeal: 1st. On the ground that no appeal to the Supreme Court lies from a judgment of the Court of Review of the Province of *Quebec*, as it is not "the highest court of final resort" in the province; 2nd. On the ground that there is no certificate to show that a bond for costs was ever executed to the satisfaction of the Court below, or of a judge thereof, as required by the 31st section of the *Supreme and Exchequer Court Act*, and by the 6th Rule of the Supreme Court Rules.

The security that the appellant contends is sufficient in this case consists of the sum of $500, which was put into the hands of the prothonotary of the Court below on the 20th November, 1877. There is no evidence that the Court below, or any judge thereof, or the respondent, ever knew that this amount had been deposited for this appeal. There was an application made to put in security, and, after a long delay, on the 17th December, 1877, it was dismissed by Mr. Justice *Rainville*. An execution was then taken out by the respondent, and an opposition *a fin d'annuller* was put in by appellant, accompanied by an affidavit that $500 had been deposited in the hands of the prothonotary on the 20th November, 1877, as security for the costs in the Court below. It was only subsequently to the fyling of his opposition and the dismissal of this application, after execution issued, that respondent heard, for the first time that the $500 deposited were intended for security for costs of the Supreme Court appeal. I contend there is no provision in the Statute allowing the prothonotary to accept this security; no one but the Court or a

judge thereof can certify that proper security has been given.

Instead of a proper certificate, it seems that a private arrangement was arrived at between the prothonotary and the appellant, the amount which had originally been deposited for costs in the Court below being suddenly declared to be a security for costs of an appeal to the Supreme Court. It is clear there is no certificate of a judge given within thirty days from the date of the judgment.

THE CHIEF JUSTICE: We will hear the counsel for the appellant on this point before going any further.

Mr. *Loranger*, Q. C. (Mr. *McIntyre* with him) for appellant:—

Under the law of the Province of *Quebec*, the money once deposited in the hands of the prothonotary is under the control of the Court. If a party wishes to bring an appeal, and is not in a position to give security, a deposit of money in the hands of the prothonotary is deemed a proper security, for, under 31 *Vic.*, c. 5, sec. 4, P. Q., the prothonotary is obliged to deposit all monies received in a case to the credit of the parties in the hands of the Treasurer of the Province, and this must be considered the best kind of security. As to notice, there can be no necessity to give respondent notice, as no one can remove the money but on an order of the Court. It is contended that there is no proof that the security required by law has been given. The certificate fyled is in accordance with the 31st section of the *Supreme and Exchequer Court Act*, and there is, at least, a legal presumption that proper security has been given, for the Court below allowed the appeal only after taking cognizance of the security. In our province there is no mention of money, because money deposited in Court is considered better than any bond. The money is deposited for the costs of this appeal, and,

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so far, the law has been complied with; the judges of the Court below have allowed the appeal, and the case is fixed for hearing; and we are now told that the appeal must be quashed. I respectfully submit that if this certificate is not deemed sufficient, the appellant is entitled to have the certificate and security completed in accordance with the views of this Court.

Mr. *Bethune*, Q. C., in reply:—

The order of dates disposes as to the argument relied on in consequence of the granting of the appeal. The certificate referred to has nothing to do with the security; it only has reference to the settling of the case. There is nowhere to be found a certificate of the Court below, or of a judge thereof, that proper security has been given.

RITCHIE, C. J.:—

An application was made to quash the appeal in this case on two grounds. 1st. That no appeal would lie in the case. 2nd. That the security required by the Statute had not been given. As the last objection must prevail, it will be unnecessary to discuss the first.

The 31st section of the *Supreme and Exchequer Court Act* provides that:

> No appeal shall be allowed (except only the case of appeal in proceedings for or upon a writ of *habeas corpus*,) until the appellant has given proper security to the extent of $500 to the satisfaction of the Court from whose judgment he is about to appeal, or a Judge thereof that he will effectually prosecute his appeal and pay such costs and damages as may be awarded in case the judgment appealed from be affirmed; provided that this section shall not apply to appeals in election cases, for which special provision is hereinafter made.

And Rule 6 of the Supreme Court Rules provides that:

> The case shall be accompanied by a certificate under the seal of the Court below, stating that the appellant has given proper security

to the satisfaction of the Court whose judgment is appealed from, or of a judge thereof, and setting forth the nature of the security to the amount of five hundred dollars, as required by the thirty-first section of the said Act, and a copy of any bond or other instrument, by which security may have been given, shall be annexed to the certificate.

The only certificate accompanying the case is as follows:

We, the undersigned, joint prothonotary for the Superior Court of *Lower Canada*, now the Province of *Quebec*, do hereby certify that the said defendant has deposited in our office, on the twentieth day of November last, the sum of five hundred dollars, as security in appeal in this case, before the Supreme Court, according to section thirty-first of the *Supreme Court Act*, passed in the thirty-eighth year of Her Majesty, chapter second.

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And it does not appear that there has been "any proper security to the extent of $500 to the satisfaction of the Court from whose judgment the appellant is appealing, or a judge thereof, that he will effectually prosecute his appeal and pay such costs and damages as may be awarded in case the judgment appealed from be affirmed." The mere fact that the party appealing has deposited $500 as security in appeal before the Supreme Court, according to section 31 of the *Supreme and Exchequer Court Act*, and a certificate to that effect, is neither a compliance with the Statute nor the rule. The proper security must be to the satisfaction of the Court or judge, or it is not the security required by the Statute; and the certificate must show that such is the case. It does not follow, by any means, that the Court or judge would be satisfied that the proper security was given by the appellant of his own mere motion depositing "as security on appeal" $500 in the prothonotary's office. It is not for this Court to determine whether money simply deposited in the prothonotary's office is a satisfactory security or not. It is enough to say that

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whether the security, which, it is alleged, has been given, may be a sufficient security or not, it is not the proper security required by law, and which the law has made a condition precedent to the allowance of the appeal, and without compliance with which, the law declares no appeal shall be allowed.

This case has been a long time before the Court, and the appellant, in the course of his argument, has craved indulgence to enable him to produce a proper certificate; he has taken no steps whatever to bring any facts connected with this deposit under the notice of the Court, or in any way to explain why he did not obtain a proper certificate, or even to show that this money was really deposited as security for costs in this Court on this appeal, or that it is a security satisfactory to the Court or a judge; nor has he produced any affidavit in any way explanatory of the matter, or made any formal application; nor put forward any facts on affidavit to justify this Court in delaying the plaintiff from obtaining the benefit of the judgment pronounced in his favor: but, on the contrary, the documents in this cause would show that the amount deposited by appellant has been treated by him, not as security for the costs in this cause in this Court, but as security for costs in the Court below.

STRONG, J.:—

I think the motion to quash the appeal must be granted on two grounds.

First. An appeal does not, in my opinion, lie in any case from the Court of Review directly to this Court. The *Supreme Court Act* only authorizes an appeal from the highest Court of final resort in the Province, and in the judgment just pronounced in the case of *Danjou* v. *Marquis*, I have stated my reasons for the conclusion, that the highest Court of final resort in the province of *Quebec* means, under the present judicial constitution

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of that Province, the Court of *Queen's* Bench, from which alone an appeal lies to this Court.

Secondly. The payment of the $500 to the prothonotary, not having been made under any order, or to the satisfaction of the Court appealed from, or of one of its judges, was entirely unauthorized by the Statute, and therefore nugatory, and just as ineffectual as security for the costs of the appeal as the payment of the same sum into any private hands would have been. The appeal must be quashed with costs.

FOURNIER, J:—

L'Intimé demande le renvoi de cet appel pour deux motifs,—le premier, est le défaut de juridiction de cette Cour pour entretenir l'appel; le deuxième est de n'avoir pas donné le cautionnement requis par la loi pour pouvoir se porter appelant.

Ce dernier moyen doit être considéré le premier, car s'il est fondé il devient inutile de s'occuper du premier. En effet, sans un cautionnement valable il n'existe pas d'appel, et dans ce cas, cette Cour ne se trouvant pas régulièrement saisie de la cause, elle doit s'abstenir d'examiner la question de juridiction.

La sec. 31 de la 38me Vict. ch. 11, impose comme condition préalable à l'exercice du droit d'appel, l'obligation de donner un cautionnement de $500 " à la satisfaction de la Cour de laquelle il y a appel, ou d'un juge " de cette Cour." Dans le cas actuel cette formalité essentielle n'a pas été accomplie.

Au lieu du cautionnement requis, l'appelant a fait entre les mains des protonotaires du district de Montréal un dépôt de $500 pour lequel ceux-ci lui ont donné le certificat suivant:

We, the undersigned, Joint Prothonotary for the Superior Court of Lower Canada, now the Province of Quebec, do hereby certify that the said Defendant has deposited in our office, on the twentieth

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day of November last, the sum of five hundred dollars, as security in appeal in this case, before the Supreme Court, according to section (31st) thirty-first of the Supreme Court Act, passed in the thirty-eighth-year of Her Majesty, chapter eleven. Montreal 17th January, 1878. HUBERT, HONEY & GENDRON, P. S. C.

Le dépôt ainsi fait, s'il avait reçu l'approbation de la Cour ou du juge, serait sans doute pour l'Intimé une garantie préférable à la simple promesse ou obligation de payer, constatée par un cautionnement. Aussi les tribunaux n'ont jamais fait difficulté d'admettre que le dépôt d'une somme de deniers, tenait valablement lieu du cautionnement exigé par la loi,—mais encore fallait-il toujours avoir recours à l'autorité de la Cour ou du juge pour faire déclarer que le dépôt tiendrait lieu de cautionnement. L'appelant pouvait donc remplacer le cautionnement par un dépôt ; mais il ne pouvait pas plus dans un cas que dans l'autre, se dispenser de l'approbation de la Cour ou du juge, tel que le requiert la section ci-dessus citée. Le juge devait être appelé à donner son approbation au dépôt des deniers aussi bien qu'au cautionnement.

En supposant que le dépôt en question aurait été fait conformément aux dispositions de "l'acte concernant les dépôts judiciaires," 35 Vict. ch. 5 (Statuts de Québec), l'appelant n'en était pas moins obligé de recourir à l'approbation du juge. Le certificat des protonotaires constate que les $500 ont été déposées dans leur bureau, mais il n'y a pas de preuve que cette somme ait été remise au trésorier de la province. La sect. 4 de cet acte oblige les protonotaires de déposer immédiatement la dite somme d'argent, par eux reçue à tître de dépôt judiciaire, au bureau du trésorier de la province et de produire dans le dossier de la Cour où cette somme a été déposée, le reçu de dépôt du trésorier,—lequel reçu fait preuve *primâ facie* du dépôt.

Il n'est pas prouvé que ce reçu a été produit dans la cause. Où sont actuellement les deniers ? Sont-ils

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encore entre les mains des protonotaires ou bien les ont-ils versés dans la caisse du trésorier de la province comme ils étaient obligés de le faire? Si les deniers sont entre les mains des protonotaires, ce n'est pas là qu'ils devraient se trouver;—s'ils sont dans la caisse du trésorier, ce fait n'est pas prouvé, et nous ne pouvons pas le présumer, car la loi a pris le soin de déclarer, que le fait du dépôt, serait établi par la production dans le dossier du reçu de dépôt du trésorier.

Les protonotaires certifient bien le fait de ce dépôt dans leur bureau, mais la loi ne les a pas chargés de cette mission vis-à-vis de cette Cour. C'est la fonction de la Cour ou du juge dont il y a appel, qu'en agissant ainsi, ils ont pris sur eux-mêmes de remplir sans en avoir l'autorité. Leur devoir était de produire le reçu du trésorier dans le dossier; et sur production de ce reçu, la Cour ou le juge aurait pu donner un certificat à cette Cour constatant le dépôt. Ce certificat eût, sans doute, été considéré comme un accomplissement suffisant de la formalité requise par la loi. L'approbation du juge est de rigueur; elle est indispensable pour mettre les deniers sous le contrôle de la justice et les affecter à la garantie des frais d'appel. Elle a été imposée, sans doute, pour mettre un terme aux contestations qui s'élevaient souvent sur la validité du cautionnement lorsqu'il s'agissait d'en réaliser le montant. Cette approbation du juge est un jugement final qui rend maintenant impossible une semblable contestation.

Rien ne démontre mieux l'importance de cette formalité, que la conduite subséquente tenue par l'appelant au sujet de ce dépôt. Après avoir obtenu des protonotaires le certificat ci-haut cité, constatant que le dépôt de $500, est fait comme garantie des frais d'appel, *as security in appeal in this case*, il a essayé d'en faire un autre emploi, en prétendant qu'il avait fait ce dépôt pour couvrir les frais encourus dans la Cour Supérieure comme on le verra ci-après.

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L'appelant n'ayant pas donné le cautionnement voulu par le paragraphe 5 de la sec. 32, pour suspendre l'exécution, l'Intimé fit émaner un bref d'exécution du jugement en cette cause, le 5 décembre 1877. Pour en suspendre l'effet, l'appelant produisit une opposition afin d'annuler, dans laquelle il prétend sous serment ne pas avoir donné de cautionnement d'appel. Il dit au contraire que son dépôt doit être affecté au paiement des frais de la Cour Supérieure.

" Qu'il est plus que suffisant pour couvrir les frais mentionnés au " dit bref, et ce dépôt ayant été fait comme susdit, ainsi qu'il appert " par le certificat produit avec les présentes (celui ci-dessous cité), " le demandeur (Intimé) est sans droit à demander l'exécution de " son jugement pour le montant des dits frais."

Ce nouveau certificat, aussi donné par les protonotaires, est comme suit :

We, the undersigned Joint Prothonotary of the Superior Court for Lower Canada, District of Montreal, do hereby certify that the said Defendant deposited in our office on the twentieth day of November last, the sum of five hundred dollars as security for costs in this cause.

Given at Montreal this fifth day of December, one thousand eight hundred and seventy-seven. Hubert, Honey & Gendron, P. S. C.

Ainsi nous avons deux certificats, l'un appropriant les deniers déposés à la garantie des frais d'appel ; l'autre, les affectant au paiement des frais déjà faits en Cour Supérieure.

C'est un double emploi que l'appelant veut faire. Il est évident que si l'on avait eu recours en premier lieu à l'approbation du juge, l'appelant n'aurait pu faire un semblable usage de son dépôt, et encore moins tenir à l'égard des tribunaux une conduite aussi peu respectueuse.

Avant d'avoir vérifié les faits par la lecture des papiers, j'aurais été disposé, conformément à la jurisprudence bien établie dans la province de Québec, à permettre l'amendement du certificat, comme la Cour

du Banc de la Reine permet l'amendement du cautionnement, surtout dans les cas où l'erreur provient des officiers des tribunaux,—mais maintenant si une demande régulière était faite à cette fin, il faudrait, pour me décider à l'accorder, une preuve suffisante pour détruire le mauvais effet produit par l'opposition de l'appelant.

Pour ces raisons j'en suis venu à la conclusion que le dépôt est nul, et que l'appelant ne s'étant pas conformé à la 31e section, au sujet du cautionnement, son appel doit être renvoyé avec dépens.

Etant d'avis qu'il n'y a pas de cautionnement, et que par conséquent cette cause n'est pas régulièrement devant la Cour, je m'abstiens d'exprimer mon opinion sur la question de juridiction.

HENRY, J.:—

This is an appeal from the Superior Court in review in *Montreal*, who gave a judgment in favor of the respondent on an appeal to that Court from the Superior Court of first instance. An appeal was first had to the Court of Queen's Bench sitting in appeal, and after argument the latter Court decided that, inasmuch as the Court of Review confirmed the judgment of the Superior Court, there was no appeal to the Court of Queen's Bench. Under the law, I think, that decision was correct, and in consequence thereof the appeal to this Court was had. On a motion before us to dismiss the appeal, the respondent's counsel relied upon two grounds:—

1st. That under the circumstances the *Supreme Court Act* provided for no appeal.

2nd. That the proper security had not been given.

Sections 11 and 17 of the Supreme Court Act were relied upon, and it was contended that under those sections there was no appeal, except from the Court of final

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resort, and that as, in most cases, the Court of Review was not a Court of final resort, no appeal would lie from it to this Court in any case.

Section 11, after declaring how the terms "judgment," "appeal," the expression "the Court," and "the Court appealed from" shall be construed, provides that "when an appeal to the Supreme Court is given from a judgment in any case, it shall always be understood to be given from the Court of last resort in the province where the judgment was rendered in such case."

It is contended, on one side, that the true construction of the last provision is to limit the appeal to cases where a judgment is of the Court of last resort not in the particular case, but of the Court of last resort generally, and that no appeal will lie in any case from any other than the Court of last resort, whether the Court of last resort has jurisdiction as an Appellate Court in any particular case or not.

On the other side, it is argued that it means the Court of last resort in the particular case.

Owing to the peculiar position of jursprudence in *Quebec*, by which the Court of Review is made, in certain cases, the Court of last resort, as is the case here, a difficulty arises as to the last clause of section 11—the words "in such case," at the end of the clause. Were these words inserted immediately after the word "Province," the sentence would then read that the appeal should be "from the Court of last resort in the Province in such case," which would clearly favor the appeal herein, and I am of the opinion that we should so place them. The words of the clause are: "When an appeal is given from a judgment, *in any case*, it shall always be understood to be given from the Court of last resort in such case." The words "in the Province where the judgment was rendered," do not, in my judgment, affect the construction, adversely

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to my view, although they precede the words "in such case." It was, it appears to me, properly the intention of the legislature to create a general Court of Appeal, and when we find that by local legislation a party is debarred from an appeal to the highest Court in a Province, and when an appeal lies from Courts of original jurisdiction, where no higher Courts exist, provided they are superior Courts, I think, in a similar case, we are justified in the conclusion that the true construction of that section (13) would give an appeal in any case where the Superior Court in *Quebec* is the Court of final resort, and were we to be governed by that section alone, I would so hold.

Section 17, however, is differently constructed. It provides that "an appeal shall lie to the Supreme Court from all *final* judgments of the highest Court of final resort, whether such Court be a Court of Appeal or of original jurisdiction * * * in cases where the Court of original jurisdiction is a Superior Court * * * and the right to appeal in civil cases * * * shall be understood to be given in such cases as are mentioned in this section." The word "highest" adds nothing to the value of the provision, for the *court of final resort* must be "highest," and we are to read the sentence which contains it as simply the Court of final resort. That term is synonymous with the term used in the 11th section; for "last resort" and "highest resort," mean the same thing.

Section 11 is the interpretation clause of the Act, and must be construed to extend the meaning of "final judgment" in the 17th section. "Judgment" is a technical legal term, and without sec. 11 it would be construed in its technical sense, and would not cover "rules," "orders" or other matters specified in section 11. In section 17 we have the words "highest court of final resort," which, I have shown, means no more

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than "Court of final resort." As to the meaning and application of the latter term we are to look at section 11 and decide according to its provisions as in the other in regard to the prescribed application of the term "judgment." If, therefore, my construction of the concluding clause of section 13 be the correct one, section 17, as read in the light of the provisions of the section which interprets it, that is, as to the Court of final resort, I may safely say the appeal will lie to this Court.

The Parliament of *Canada*, when passing the *Supreme Court Act*, must be assumed to know the state of the law in *Quebec*, as to appeals from the Court of Review, (which is an Appeal Court,) and to have known that no appeal would lie therefrom in certain cases to the Court of Queen's Bench in appeal. The Act provides for appeals from all provinces where the Court of original jurisdiction is the Court of final resort in all cases. The policy of the Act is, therefore, to allow appeals in all cases where the Court of original jurisdiction is the Court of final resort, where the Court of original jurisdiction is a Superior Court. In certain cases, then, in *Quebec*, where the Court of original jurisdiction is a Superior Court, and, as to those cases, a Court of final resort, unless my construction be adopted, there would be no appeal, while in other provinces there would be. In *Quebec*, as to those cases, there would be no appeal, while in other provinces under similar circumstances an appeal lies. In the construction of Statutes, where any difficulty arises, we are not only authorized, but required to give effect, not only to the mere words employed as far as they are intelligible, but to give effect as well to the spirit as the letter of the enactment, and if by one construction an obvious inconsistency appears and by another it is consistent, we are bound to give a construction by which its consistency

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will be shown. I, therefore, consider myself justified in deciding that the appeal herein is provided for.

The other point, however, I feel bound to decide against the appellant. By the rules of this Court the appellant is required to put in security to the satisfaction of the Court appealed from or of a judge thereof, and the case must be accompanied by a certificate, under the seal of the Court, so stating. The certificate in this case is defective. In the first place it is not under the seal of the Court as required by rule 6 of this Court, and it does not allege the security to have been "to the satisfaction of the Court * * * or of a judge thereof." Section 31 of the *Supreme Court Act* requires the security to be so given, as well as the rule before mentioned. By the section and rule the security must be given to the satisfaction of the Court below or a Judge thereof, and the rule provides for the evidence of that fact to us. The right of deciding as to the sufficiency of the security is vested in the Court below or a Judge thereof, and I can see no way for substituting any other means of deciding it. Even were it shown the security was ample, we are not authorized to decide upon it, as the law has not authorized us to do so. Our jurisdiction to hear the appeal is conditional upon the Court below or a Judge thereof being satisfied with the security. Although not within our functions to decide upon the sufficiency of the security, we might possibly have reserved our decision and allowed the appellant reasonable time to obtain the necessary certificate, had we been so asked within a reasonable time after the appeal was first inscribed; but no such request having been made and so long a time having elapsed, I don't think we should now suggest such a course, or permit it to be taken. I think, therefore, the appeal must be dismissed.

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TASCHEREAU, J.:—

On the first ground of the respondent's motion to dismiss this appeal, that is to say, for want of sufficient security, I would be of opinion to remit the record to the Court below, under the fourth of the rules of practice of this Court, in order to allow the certificate to be completed. The prothonotary duly certifies to us that the appellant has deposited in his office the sum of $500 as security in appeal to this Court, according to section 31 of the *Supreme Court Act*. According to 35 *Vic.*, c. 5, Q., an Act concerning judicial deposits, that sum must now be in the hands of the Provincial Treasurer as such security. *Omnia presumuntur rite esse acta donec probetur in contrarium.* The first certificate given by the prothonotary, filed by the respondent with his motion, is not at variance with the certificate returned to this Court with the case, and I fail to see by the opposition made by the appellant in the Court below, and fyled here by the respondent with his motion, that these $500 were deposited for any other purpose than as security for the appeal to this Court. What other security was the appellant obliged to give, or could he even give? The prothonotary certifies to us that security has been given for the appeal to this Court, and for me this is conclusive. But there is an irregularity in this certificate, inasmuch as it does not state, as required by the 6th of our rules of practice, that such security was given to the satisfaction of the Court appealed from or of a judge thereof. As $500 deposited in cash are certainly the best security that could be given under section 31 of the *Supreme Court Act*, this irregularity seems to me only a matter of form, and, according to the 69th of our rules of practice, which says that no proceeding in this Court shall be defeated by any formal objection, I would be of opinion to remit

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the record to the Court below to have this irregularity remedied.

But on the second ground of his motion I am with the respondent, and think that this appeal should be dismissed, because it is an appeal from the Court of Review, and consequently not from the highest Court of last resort in the Province of *Quebec*.

I need not repeat here what I have just said in *Danjou* v. *Marquis*. For the reasons I gave then, which apply, for the greater part, to this case, I am of opinion that there is no appeal from the Court of Review in the Province of *Quebec*, because that Court is not the Court of last resort in the Province. The appellant contends that for him, in this case, the Court of Review is the Court of last resort. That is so. But it is not the Court of last resort in the Province where the judgment was rendered in this case, according to the very words of section 11. He is not allowed to go to that Court of last resort, but that is by his own act, and, then, it is not a reason to allow him an appeal from any other Court, in face of this section 11 of the *Supreme Court Act*. Then section 17, under which he brings his appeal, is still stronger against him. "An appeal shall lie to the Supreme Court," says this clause, "from all final judgments of the highest Court of final resort now or hereafter established in any Province, and the right to appeal in civil cases given by this Act shall be understood to be given only in such cases as are mentioned in this section" This seems to me perfectly clear. No appeal, except from the Court of last resort in each Province is given. If a different construction was given to the Statute, this case might have been pending at the same time before this Court and before the *Quebec* Court of Appeal. For immediately, when the judgment in Review was given, confirming the judgment of the Superior Court, the plaintiff, who, in

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the Superior Court, had obtained judgment for $16,000 less than he demanded, had a right to appeal to the Court of Queen's Bench from that judgment, under sections 499 and 1118 of the *Code of Procedure*. So that the case would have been pending at the same time before the Court of Queen's Bench on an appeal by the plaintiff from the judgment of the Superior Court, and before this Court on an appeal by the defendant from the judgment of the Court of Review.

I am of opinion that this appeal should be quashed with costs.

Appeal quashed with costs.

Solicitors for appellant: *Loranger, Loranger & Pelletier.*

Solicitors for respondent: *Bethune & Bethune.*