

LÉON O. NOEL (PETITIONER).....APPELLANT;

AND

MARIE A. B. CHEVREFILS (CON- }  
TESTANT)..... } RESPONDENT.

1900

\*May 5.

\*May 17.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
LOWER CANADA, APPEAL SIDE.*Appeal—Jurisdiction—Matter in controversy—R. S. C. c. 135, s. 29b—  
Tutorship—Petition for cancellation of appointment—Arts. 249 et seq.  
C. C.—Tutelle proceedings.*

The Supreme Court of Canada has no jurisdiction to entertain an appeal from a judgment pronounced in a controversy in respect to the cancellation of the appointment of a tutrix to minor children.

APPEAL from the judgment of the Court of Queen's Bench for Lower Canada, appeal side, reversing the judgment of the Court of Review at Montreal and restoring the judgment of the Superior Court for the district of Arthabasca, which had dismissed the appellant's petition for the cancellation of the respondent's appointment as tutrix to her minor children.

Under the provisions of the Civil Code relating to the appointment of tutors to minor children, a family council was convened which elected male relatives as tutor and sub-tutor to the minor children of the late L. M. A. Noel, deceased, and formally excluded the widow from the tutorship of her children, issue of her marriage with the deceased. On the report of the *tutelle* proceedings being presented for homologation, the Prothonotary of the Superior Court, District of Arthabasca, ignored the advice of the family council and assuming to act in conformity with the third sub-

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

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section of article 282 of the Civil Code, named the widow as tutrix in place of the male relative recommended for the office by the family council. The appellant then petitioned the Superior Court for the cancellation of this nomination, and, after hearing the issues joined upon the contestation by the respondent, Choquette J. dismissed the petition with costs. This judgment was reversed by the Court of Review at Montreal, and the respondent dismissed from office, but on her appeal to the Court of Queen's Bench, the judgment now appealed from was rendered reversing the judgment of the Court of Review and restoring that of the trial court in her favour.

*Bisaillon Q.C.* for the respondent moved to quash the appeal.

*Fitzpatrick Q.C.* contra.

The judgment of the court was delivered by :

TASCHEREAU J.—This is an appeal from a judgment of the Court of Queen's Bench dismissing a petition of the appellant to set aside the appointment of the respondent as tutrix to her children. We have no jurisdiction in the matter. There is no pecuniary amount in dispute, and the matter in controversy does not

relate to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents and other matters or things where future rights (of that nature) might be bound.

An affidavit is filed that the estate left by these children's father is worth over \$2,000. But that cannot give us jurisdiction. No part of the estate is in controversy in the case. The appellant, to support his right to appeal, relies upon the words of the statute, sec. 29,

and (not "or") other matters or things where the rights in future might be bound.

But the case of *O'Dell v. Gregory* (1) is a binding authority that these words are not applicable to this case.

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In the case of *Mitchell v. Mitchell* (2), relied upon by the appellant, upon an action to remove an executor this court entertained the appeal, and the case might perhaps not be easily distinguished from this one. However, the court does not appear there to have passed upon the question of jurisdiction. The appeal being dismissed, it was unnecessary to determine that point, as is often done in such a case. *Bain v. Anderson* (3).

The motion to quash is granted with costs.

*Appeal quashed with costs.*

Solicitors for the appellant: *Crépeau & Crépeau*.

Solicitor for the respondent: *Joseph E. Méthot*.

(1) 24 Can. S. C. R. 661.

(2) 16 Can. S. C. R. 722.

(3) 28 Can. S. C. R. 481.