THE CORPORATION OF THE CITY OF OTTAWA (DEFENDANT)..... } APPELLANT;

AND

ALEXANDER HUNTER (PLAINTIFF) ...RESPONDENT.

1900
*Oct. 22,
*Oct. 24.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Appeal—Jurisdiction—Amount in controversy—60 & 61 *V. c.* 34 (*c*) *and* (*f*).

Sec. 1 sub-sec. (*f*) of 60 & 61 Vict. ch. 34, providing that in appeals from the Court of Appeal for Ontario "whenever the right to appeal is dependent upon the amount in dispute, such amount shall be understood to be that demanded, not that recovered, if they are different," is inoperative, being repugnant to sub-sec. (*c*).

The fact that sub-sec. (*f*) is placed last in point of order in the section does not require the court to construe it as indicating the latest mind of Parliament as the whole section came into force at the one time.

APPEAL from the decision of the Court of Appeal for Ontario reversing the judgment of the Divisional Court which reduced the amount of damages recovered at the trial, $261, to $60, and restoring the judgment for the larger sum.

The plaintiff's action was to recover the sum of $1,325.21 for the use by the city of certain weigh scales on the public markets for weighing materials belonging to the city under an agreement between the parties, and for services rendered by plaintiff in weighing said materials. At the trial plaintiff recovered $265. On appeal by the city to the Divisional Court the damages were reduced to $60, but the judgment at the trial for $265 was restored on further appeal by the plaintiff to the Court of Appeal. The city then appealed to the Supreme Court.

*PRESENT:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

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Latchford Q.C. moved on behalf of the respondent, after notice, to quash the appeal for want of jurisdiction, claiming that only $265 was in dispute and citing *Bain* v. *Anderson* (1); *Jermyn* v. *Tew* (2), as authorities for the position that the sum demanded in the action does not govern the amount in dispute.

McVeity, contra. The Act 60 & 61 Vict. ch 34 (*f*) is in precisely the same terms as R. S. C. ch 135, sec. 29, sub-sec. 4 relating to Quebec appeals, and the latter sub-section has always been acted upon. *Laberge* v. *Equitable Life Insurauce Society.* (1).

If the two sub-sections of sec. 1 are repugnant sub-sec. (*f*) should be the one upheld as it is placed later in the section than (*c*).

The judgment of the court was delivered by :

TASCHEREAU J.—The respondent's action was for $1,325. Judgment was given at the trial in his favour for $261. He was satisfied with that amount and no motion was made on his behalf against the said judgment.

The appellant however appealed from it, claiming that the amount of $261 was too large, and such appeal was heard before the Queen's Bench Division, where judgment was given reducing the amount of the respondent's verdict to the sum of $60.

The respondent thereupon appealed from the last mentioned judgment to the Court of Appeal for Ontario, seeking to have the judgment of the trial judge restored, and that the amount of the judgment as awarded by the trial judge, namely, $261, should be maintained.

Upon that appeal the respondent did not ask that the amount of the judgment, as pronounced by the

(1) 28 Can. S. C. R. 481. (2) 28 Can. S. C. R. 497.
(1) 24 Can. S. C. R. 59.

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trial judge, should be increased, but was content that the judgment should remain at that amount.

The appeal was duly heard before the Court of Appeal and the judgment of that court was pronounced on the 29th of June, 1900, allowing the said appeal of the respondent and ordering that the judgment of the trial judge for the sum of $261 should be restored.

The present appeal has now been brought by the appellant to this court against the judgment of the Court of Appeal, awarding the respondent the said sum of $261, the amount of the original verdict in his favour at the trial.

The respondent moved to quash on the ground that under 60 & 61 Vict. ch. 34, sec. 1 (*c*) (*D*), this court has now no jurisdiction in Ontario cases wherein the amount in controversy does not exceed one thousand dollars. The appellant in answer to that motion, rests his right to appeal on paragraph (*f*) of the same section of the Act, the original demand being for over one thousand dollars.

The same point has been determined as to Quebec appeals in *Laberge* v. *Equitable Life Assurance Society* (1). We there held that it is the amount originally claimed, not the amount claimed by the appeal, or in controversy before this court, that must govern in cases where our jurisdiction depends upon the pecuniary amount; and the appellant here contends that the construction we gave to the statute in that case should be now given to the Ontario appeals under 60 & 61 Vict. ch. 34

That co ention however cannot prevail, for the simple reason that the enactments relating to Quebec appeals are different from those relating to Ontario appeals. It is true that paragraph (*f*) relating to

(1) 24 Can. S. C. R. 59.

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Ontario appeals is in the same words as paragraph 4, of sec. 29 of the Supreme Court Act, relating to Quebec appeals, under which *Laberge* v. *The Equitable Life Assurance Society* (1) was determined. But then in paragraph 1 of the section relating to Quebec appeals, it is where the amount in controversy does not amount to two thousand dollars that the case is not appealable, whilst for the Ontario appeals, the words "in the appeal" have been added after the words "the amount in controversy," making it read that it is only when the amount in controversy *in the appeal* exceeds the sum of one thousand dollars that the case is appealable.

Now when we see in statutes *in pari materiâ*, by the very same legislature, additional words of that nature to a prior enactment, we would be setting at naught the very clear intention of the legislature if we gave to the last enactment the same construction that had been judicially given to the prior one, as the appellant asks us to do. We cannot so read out of a statute expressions that must be held to have deliberately been inserted so as to make the new statute different from the prior one.

It is upon the appeal before this court, in Ontario appeals, that the matter in controversy must exceed one thousand dollars. Vide *Bain* v. *Anderson & Co.* (2); *Jermyn* v. *Tew* (3). Parliament has clearly intended, for Ontario appeals, not to re-enact the anomaly that exists in Quebec cases of allowing appeals where the only amount in controversy before this court may be of $100, $50, $20, or even a less amount.

By construing paragraph (*f*) as if the words "by the appeal" were inserted after the word "demanded," there is no repugnancy between it and the prior paragraph

(1) 24 Can. S. C. R. 59. (2) 28 Can. S. C. R. 481.
(3) 28 Can. S. C. R. 497.

(*c*). By that construction, the two enactments are reconciled. And that we have to do, if at all possible.

The rule that a prior enactment is superseded by a later one incompatible with it cannot be applied here. These two paragraphs became law at one and the same moment. They no doubt cannot but be read one after the other, but Parliament's will as to both was expressed by simultaneous enactments; and these enactments cannot together be construed as meaning that it is and that it is not the amount in controversy in the appeal bofore this court that will govern the right of appeal, or as saying at the same breath, yes and no.

It would be so irrational for a legislative body to enact a law, and at the very same time to repeal it, that it cannot be contended that paragraph (*f*) of the Act in question repealed the words "in the appeal" that are tc be found in paragraph (*c*). No statute ever concluded by a repeal clause or an amending clause of its own enactments, and no construction involving impliedly such a repeal or amendment can be admitted.

Motion allowed with costs.

Appeal quashed with costs.

Solicitor for the appellant: *Taylor McVeity.*

Solicitors for the respondent: *Latchford, McDougall & Daly.*