

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for leave to appeal of the Minister and Trustees of St. Andrew's Church, Montreal, v. James Johnston, from the Supreme Court of Canada; delivered December 10th, 1877.

Present :

THE LORD CHANCELLOR,
SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is an application for the exercise by Her Majesty of her prerogative for the purpose of allowing an appeal to be brought from a judgment of the Supreme Court of Canada. The circumstances under which that judgment was given are these: A person of the name of Johnston commenced an action in 1873 in the Superior Court of the district of Montreal against the present Petitioners, who are the minister and the trustees of St. Andrew's Church, Montreal. The object of that action was to recover damages for what may be called a disturbance in the occupation of a pew in the church. The declaration stated that the Plaintiff was lessee of a pew in St. Andrew's Church for several years, and a pew-holder under a byelaw made by the trustees of the church. The byelaw referred to is the 10th, and it provided that "Any person who
" shall lease a pew from the trustees for one year
" and pay the rent in advance, shall be considered
" a pew-holder; the rents of pews and sittings
" are to be paid annually in advance from the
" first day of January, and are considered to be

" then due." The declaration then stated further that he was the legal lessee of the pew No. 68 for and during the year from the 1st of January to the 31st of December 1872 by verbal lease, and that on the 7th December 1872 he received a notice from the trustees that they declined to re-let the pew to him for the year commencing January 1st, 1873; that he did not receive sufficient legal notice, and that he became the legal lessee of the pew for the year commencing the 1st of January 1873, and ending the 31st December 1873, by the tacit renewal by law provided. Then he complained that the trustees had inflicted damage on his good name and reputation by removing his books from the pew, and his hassocks, and by placing strangers in the pew, and he claimed damages 10,000 dollars. On the other hand the present Petitioners, the trustees, by their pleas averred in the first place that the Plaintiff was not lessee of the pew No. 68 after the 31st December 1872, and that they had a right to refuse to lease it to him after that day; and, secondly, that according to the by-laws, custom, and practice in the church, the pews were let each year and from year to year, and the trustees were under no obligation to continue the lease, nor was there any continuation thereof without their consent, nor was any notice required of the termination thereof. Then that when the Plaintiff received the notice of the 7th December 1872, and frequently afterwards, he acknowledged the right of the trustees to refuse to let him the pew, and waived any pretensions to notice. Then that the action of the trustees of the 7th of December 1872 was ratified by the congregation at a general meeting at which the Plaintiff was present, and in the proceedings whereof he participated; and, finally, that all other acts and proceedings had been done in good faith.

That being the cause of action, and those the issues raised, the Supreme Court of the district of Montreal gave judgment dismissing the action, with costs; and thereupon there was an appeal by the Plaintiff Johnston to the Court of Queen's Bench for the Province of Quebec, the appeal side; and on the 3rd of February 1876 the Court of Appeal gave judgment (there being a division of opinion, and a majority of three, and a minority of two,) supporting the decision of the primary Court. There had thus been the opinions of two Courts taken. Then the Plaintiff in the action, Johnston, appealed to the Supreme Court of Canada, the Court of Appeal for the Dominion of Canada, established by the Colonial Act, the 38th of the Queen, chapter 11. That Supreme Court gave judgment on the 28th of June 1877, and the judgment of the Supreme Court allowed the Appeal, reversed the judgments of the Courts below, and ordered the trustees to be condemned to pay to the Plaintiff Johnston the sum of 300 dollars for damages, together with costs in all Courts.

It is with reference to that last judgment that the present petition is presented. The Petitioners assume that from it they would not have an appeal as a matter of right, but they ask to be allowed to have an appeal by the prerogative of Her Majesty.

The first question is, is there in this case a power, notwithstanding the Canadian Act, to allow, if Her Majesty should be so advised, such an appeal. Now I will read the section of the Canadian Act. It is the 47th section:—"The
 " judgment of the Supreme Court shall in all
 " cases be final and conclusive, and no appeal
 " shall be brought from any judgment or order
 " of the Supreme Court to any Court of Appeal
 " established by the Parliament of Great Britain
 " and Ireland, by which appeals or petitions to

“ Her Majesty in Council may be ordered to be heard, saving any right which Her Majesty may be graciously pleased to exercise by virtue of Her royal prerogative.” That section consists of three parts; the second or intermediate part of the section contains the negative words “no appeal shall be brought,” et cetera. Those words their Lordships may leave out of consideration, because they refer to what may be called the hypothetical establishment of a Court by the Parliament of Great Britain and Ireland, by which Court appeals from the colonies are supposed to be ordered to be heard; and inasmuch as no Court of that kind has been established, that part of the section may be omitted from our consideration. I will read it, therefore, as if the section ran thus, “The judgment of the Supreme Court shall in all cases be final and conclusive, saving any right which Her Majesty may be graciously pleased to exercise by virtue of Her royal prerogative.”

Now their Lordships have no doubt whatever that assuming, as the Petitioners do assume, that their power of appeal as a matter of right is not continued, still that Her Majesty's prerogative to allow an appeal, if so advised, is left entirely untouched and preserved by this section. Therefore their Lordships would have no hesitation, in a proper case, in advising Her Majesty to allow an appeal upon a judgment of this Court.

But the question remains, assuming that there is the power to allow an appeal, is this a case in which the special prerogative of Her Majesty should be exercised?

Upon that point their Lordships have been unable to discover any adequate grounds for the special exercise of the prerogative. With regard to the particular amount at issue between the trustees on the one side, and the

Plaintiff in the action on the other, that of course is the amount of damage which the trustees have been ordered to pay, namely, the sum of 300 dollars,—a sum far short of the appealable value which has been defined in Canadian cases; and therefore if the particular value alone is looked to, there is not that amount of injury which would justify any special interposition of the prerogative.

Then, is there any general principle affecting a number of other cases established by the decision which should lead their Lordships to overlook the small amount of damage in the particular case?

As already pointed out, the issue between the parties appears to have been simply an issue upon the legal construction and effect of a particular contract, a contract for the occupation of the pew in question. So far as the declaration and the pleas are concerned, the question apparently raised between the parties was, both of them admitting that the tenure of the pew might properly be styled a lease, whether a pew-holder was entitled, under a certain clause in the Civil Code of Canada, to three months' notice to quit by reason of it having been a verbal lease. It is sufficient, with regard to a contest of that kind, to say that the decision of the Court below may either have been right or wrong. Their Lordships express no opinion whatever upon the point, but whether right or wrong it is not a decision which can have any bearing or which can occasion any inconvenience with respect to a large number of other cases. If there is any want of perspicuity in the terms under which the pews in this church at present are let, if there be any words in the byelaws of the trustees as to the letting of the pews which have caused a difference of opinion between the Judges of the Courts, all that can

be most easily remedied, before any other annual letting of the pews, by an alteration in the words of the byelaws. And it appears to their Lordships that it would be a departure from the principles which should guide them when advising Her Majesty as to when an appeal should be allowed, to advise that an appeal should be allowed merely for the purpose of testing the accuracy of the construction put upon a particular document, which document, if it affects any number of other cases, can be altered at the will of the party who asks for the exercise of the prerogative in allowing an appeal.

Their Lordships, therefore, cannot, either from the magnitude of the particular case, or from the effect which this decision may have upon a number of other cases, think that this is a case in which they should advise Her Majesty to allow the appeal which is asked for. They therefore must recommend Her Majesty not to assent to the prayer of this petition, but to dismiss it.