

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

Que.]

[May 4.]

SEDGEWICK v. MONTREAL LIGHT, HEAT & POWER CO.

*Appeal—Court of Review—Appeal to Privy Council—Appeal-
able amount—Amendment to statute—Application—Notice
of appeal—New trial—Marine insurance—Constructive total
loss—Trial by jury—Misdirection.*

An appeal lies to the Supreme Court of Canada from a judgment of the Court of Review which is not appealable to the Court of King's Bench, but is susceptible of appeal to His Majesty in Council. By 8 Edw. VII. c. 75(Que.) the amount required to permit of an appeal to His Majesty in Council was fixed at \$5,000 instead of £500 as before.

Held, that said Act did not govern a case in which the judgment of the Court of Review was pronounced before it came into force.

By s. 70 of the Supreme Court Act, notice must be given of an appeal from the judgment *inter alia* "upon a motion for a new trial."

Held, that such provision only applies when the motion is made for a new trial and nothing else and notice is not necessary where the proposed appeal is from the judgment on a motion for judgment non obstante or, in the alternative, for a new trial.

In order to determine whether or not a ship is a constructive total loss under a policy of marine insurance, the value of the hull when broken up should be added to the cost of repairs; and where at the trial on such a policy the jury were not instructed to fix such value, and, therefore, made no finding in respect to it, and were misdirected as to the meaning of a total loss (art. 2522, C.C.) the Supreme Court reversed the judgment of the Court of Review affirming the verdict for the plaintiffs and ordered a new trial.

Appeal allowed with costs.

Lafleur, K.C., and *Pope*, for appellants. *R. C. Smith*, K.C., and *Montgomery*, for respondents.