

defendants answered that the transaction was not a giving in payment, but a giving of a security. The Court of Queen's Bench held that the defendants had been paid by the *dation en paiement* of the immovables, and that defendants owed a balance of \$1,154 to the plaintiff. On application being made to the Registrar of the Supreme Court in Chambers, the security for appeal to the Supreme Court was allowed.

On motion to quash the appeal by the plaintiff for want of jurisdiction, on the ground that the amount in controversy was under \$2,000,

Held, that the pecuniary interest of the defendants affected by the judgment appealed from was more than \$2,000 over and above the plaintiff's claim, and therefore the case was appealable under R.S.C., c. 135, s. 29. *MacFarlane v. Leclaire*, 15 Moc. P.C. 181, followed.

Motion to quash refused with costs.

Buchan for motion.

Butler, Q.C., *contra*.

Quebec.]

MONTREAL STREET RAILWAY CO. v. CITY OF MONTREAL.

Street railway contract with municipal corporation—Taxes.

By a by-law of the city of Montreal, a tax of \$2.50 was imposed upon each working horse in the city. By section 16 of the appellant's charter it is stipulated that each car employed by the company shall be licensed and numbered, etc., for which the company shall pay, "over and above all other taxes, the sum of \$20 for each two-horse car, and \$10 for each one-horse car."

Held, affirming the judgment of the court below (Q.R. 2 Q.B. 391), that the company are liable for the tax of \$2.50 on each and every one of its horses.

Appeal dismissed with costs.

Branchaud, Q.C., and *Geoffrion*, Q.C., for the appellant.

L. J. Ethier, Q.C., for the respondent.

Quebec.]

MCINTOSH v. THE QUEEN.

Criminal appeal—Criminal Code, 1892, s. 742—Undivided property of co-heirs—Fraudulent misappropriation—Unlawfully receiving—R.S.C., c. 164, ss. 85, 83, 65.

This was an appeal from the Court of Queen's Bench for Lower Canada (appeal side).

Where on a criminal trial a motion for a reserved case made on two grounds is refused, and on appeal to the Court of Queen's Bench (appeal side) that court is unanimous in affirming the decision of the trial judge as to one of such grounds, but not as to the other, an appeal to the Supreme Court can only be based on the one as to which there was a dissent.

A conviction under s. 85 of the Larceny Act, R.S.C., c. 164, for unlawfully obtaining property, is good, though the prisoner, according to the evidence, might have been convicted of a criminal breach of trust under s. 65.

A fraudulent appropriation by the principal and a fraudulent receiving by the accessory may take place at the same time and by the same act.