

The Legal News.

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APPEALS FROM THE SUPREME COURT.

The Judicial Committee of Her Majesty's Privy Council have had under consideration the clause of the Supreme Court Act of Canada, taking away the right of appeal from any judgment or order of the Supreme Court. The question came up in a somewhat memorable case—an action brought by Mr. James Johnston of Montreal against the Minister and Trustees of St. Andrew's Church, in the same place. Mr. Johnston was lessee of a pew in St. Andrew's Church. Before the termination of the year ending 31st December, 1872, he received notice from the trustees that they declined to re-let the pew to him for the year commencing 1st January, 1873. Mr. Johnston complained that this notice was not legal, and that not having received a sufficient legal notice he became the legal lessee of the pew for the ensuing year; but that the trustees had refused to let him have possession, and had removed his hassocks from the pew and allotted it for the use of strangers. For these reasons Mr. Johnston claimed \$10,000 damages.

By their pleas the trustees averred that Mr. Johnston had ceased to be lessee of the pew on the 31st December, 1872, and that they had a right to refuse to lease it to him again after that date.

The Superior Court (Johnson, J. presiding) dismissed the action. (18 L. C. Jurist, 113.) The Judge held that the St. Andrew's Church being a voluntary organization, the civil courts could not interfere with the determination of the majority unless some civil right was assailed. In this instance the Judge considered that there was no such interference, and that the minister and trustees had a right to refuse to renew the lease of the pew on the expiration of the term for which it was leased.

There was an appeal by Mr. Johnston to the Court of Queen's Bench, Appeal side, and there the judgment of the Superior Court was sustained by a majority of the Judges, Chief Justice Dorion and Mr. Justice Ramsay dissenting.

The case then went to the Supreme Court of Canada, and by the judgment of this tribunal, rendered 28th June, 1877, the decision of the two lower Courts was unanimously overruled, the pretensions of Mr. Johnston were sustained, and the trustees were condemned to pay \$300 damages, with the costs of all the Courts. This judgment was based upon the proved usage of the Church, that a member once the lessee of a pew can continue to hold it by paying the usual rent and remaining a member of the Church, unless he is guilty of immoral behavior, and in that case he could only be deprived of his pew by the Kirk Session.

The case was in this position when the defendants in the suit sought to obtain an appeal to Her Majesty. The 47th Section of the Supreme Court Act, 38 Vict., c. 11, takes away the right of appeal in these words: "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.*" Their Lordships of the Judicial Committee had, therefore, to determine whether a case had been made out for the exercise of the special prerogative of Her Majesty. On this point the Lord Chancellor expressed himself as follows:

"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 to do, is left 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 in this case. With regard to the particular injury arising as between the trustees on one side and the plaintiff in the action on the other, that of course is