

given in form aforesaid as the matters aforesaid, by the said William Dummer Powell above for reasons of Appeal assigned, (but without reference to the points reserved at Nisi Prius aforesaid,) being seen and by the said Court of Appeal here fully understood, and mature deliberation being thereupon had, it appears to the said Court of Appeals here, that there is no error either in the Record and Proceedings aforesaid, or in giving the Judgment aforesaid. THEREFORE IT IS CONSIDERED that the Judgment aforesaid in form aforesaid given, be in all things affirmed and stand in force and effect, the several matters above as reasons of said Appeal in anywise notwithstanding. And the said William Dummer Powell in mercy, &c."

Appendix, No. 1, p. 14.
Appeal allowed.

Upon the 23rd of February, in the same year, an Appeal was made on behalf of Powell to His late Most Excellent Majesty in Council, and the same was allowed by the said Court of Appeal of Upper Canada.

It appears, from a certified copy of the Proceedings in the Court of Appeal in Canada, not being matter of record, transmitted along with the transcript, that an application was made on behalf of Powell, that in addition to the ordinary transcript of the Record, all the proceedings had in the Cause, or with reference to it, from the commencement to the conclusion, including the entries from the Minute Book, should be certified under the Great Seal and transmitted to His Majesty in Council. The Court however *refused to depart from Law and Usage, and determined that nothing could be certified as the Record under the Great Seal, except the Record of the Judgment of that Court upon the Record sent up to them.* But the Court, at the suggestion of Counsel, instructed the Clerk that there would be no objection to his giving to the Appellant a certified copy of all the proceedings, whether the same were properly matters of Record or not, namely, of any motions or applications whether granted or refused, and of any collateral or interlocutory proceeding had in that Court on the Case.

Such certified copy was accordingly given by the clerk, but there is nothing in it material to the merits.

It has been already stated that Mr. Monk is dead, and Mr. Simon Washburn, the Respondent, is his Administrator with the Will annexed.

Mr. Powell has also died since the Appeal; and his executors, Grant Powell, Elizabeth Powell, and Samuel Peters Jarvis, have obtained leave to prosecute the same.

It is submitted with the utmost confidence, that the Judgment of the Court of Appeal is perfectly correct. The jurisdiction of that Court is obviously that of a Court of Error, and it is of first principles that a Court of Error cannot look beyond the Record. In the present case, no error of any kind appears upon the face of the Record: it seems to be correct in every particular, both of form and substance.

As to the points reserved at Nisi Prius, (if it were competent for the Court to entertain them,) there would be little difficulty in showing that Monk (the Plaintiff below) was entitled to the Judgment of the Court, which he obtained upon them. Not one of them go to the merits of the case—they are all founded upon supposed technical difficulties, for which, when they come to be examined, there is not any foundation; and it seems to be admitted that the money sued for and recovered by Monk, was really due, and had never been paid.

But it is not competent for any Court of Appeal to entertain these points. The form of proceeding of taking a verdict for a Plaintiff, and giving the Defendant leave to move to enter a Nonsuit, is of ordinary occurrence in the Courts at Westminster, from whence no doubt it was adopted by the Court of King's Bench, in Upper Canada. This practice is