

sisters, and of the estate (subject to the usufruct) to their children, which took effect at the death of the testator. That the charge of preserving the estate—"conserver les fonds"—imposed upon the testamentary executor, could not be construed as imposing the same obligation upon the sisters who were excluded from the administration, or as having, by that term, given them the property subject to the charge that it should be handed over to the children at their decease, or as being a modification of the preceding clause of the will by which the property was devised to the children directly, subject to the usufruct. That the property thus devised was subject to partition between the children *per capita* and not *per stirpes*.

Appeal dismissed with costs.

*Robidoux*, Q.C., for the appellant.

*A. Geoffrion*, for the respondent.

12th May, 1897.

Quebec]

CITIZENS LIGHT & POWER CO. v. PARENT.

*Appeal from Court of Review—Appeal to Privy Council—Appealable amount—54 & 55 V. (D.) ch. 25, s. 3, ss. 3 & 4—C.S.L.C. ch. 77, s. 25—C.C.P. Arts. 1115, 1178; R.S.Q. Art. 2311.*

Notwithstanding that by the jurisprudence of the Judicial Committee of the Privy Council, where the right of appeal from decisions of the Courts of Lower Canada depends upon the amount in controversy exceeding five hundred pounds sterling, the measure of value for determining such right is the amount recovered in the action, yet in appeals to the Supreme Court of Canada from the Court of Review (which by 54 & 55 Vic., ch. 25, sec. 3, ss. 3, must be appealable to the Judicial Committee of the Privy Council), the amount by which the right of appeal is to be determined is that demanded and not recovered if they are different, as provided by sub-section 4 of the third section of the said act, and by R. S. Q. art. 2311.

Motion refused with costs.

*R. C. Smith*, for the appellant.

*Charbonneau* for the respondent.