## NOTES OF CASES.

### SUPERIOR COURT.

MONTREAL, Sept. 17, 1879.

CHANTELOUP v. THE DOMINION OIL CLOTH CO.

*Report of Experts—Delay to file*—C.C.P. 337.

RAINVILLE, J. This case came up for trial at Enquête and merits before Mr. Justice Jetté, and after the examination of some witnesses, was by him referred to experts, who were to report on or before the 1st of August. The report, however, was only filed on the 17th August. Plaintiff moved to reject it, claiming that under art. 337 C.C.P. the delay was fatal. I cannot agree with him. Art. 338 shows that in case of delay the experts may even be compelled to file their report. I do not consider their report as analogous to that of arbitrators, as urged by plaintiff. The latter is decisive, the former is merely evidence for the information of the Court. The motion is, therefore, rejected with costs. Defendant's counter motion, for extension of the delay until after the date of the filing of the report, is granted, as that may be done even after the delay has expired.

*L. N. Benjamin*, for plaintiff.

*Trenholme & Maclaren*, for defendant.

### COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, & CROSS, JJ.

STANTON, Appellant, and THE HOME INSURANCE Co., Respondent.

*Appeal to Privy Council—Amount of demand—Interest not to be included.*

The appellant Stanton, moved for leave to appeal from the judgment of the Court of Queen's Bench, which confirmed a judgment of the Superior Court, dismissing his action; (*ante*, p. 238).

Sir A. A. DORION, C. J., said this was an application on the part of the appellant, to be permitted to appeal to the Privy Council. The action was for $2,150, a sum less than £500 sterling, but the case had been pending eight years, and the interest and principal united now amounted to considerably more than £500 sterling. In the case of *Voyer & Richer*, the Privy Council allowed an appeal (though this Court had refused it), on the ground that by adding interest and costs the amount in dispute was over £500 sterling. That was contrary to the whole course of decisions in this country, and the decisions in this country were in conformity to the statute (C.S.L.C. cap. 77, s. 25). The attention of the Privy Council perhaps, had not been drawn to the statute, and it might be well that it should be put before them on the next occasion. The statute said the amount of the demand, was what should be looked at, and following this rule, the motion for leave to appeal in this case would be rejected.

RAMSAY, J., said there was great equity in the other rule, no doubt. But the amount demanded was the amount of the demand at the time the action was instituted, and the interest, as a mere incident, could not be considered. The Privy Council had powers which this Court had not, and the Privy Council was not bound by our statute. Until the law was changed, this Court must refuse the appeal in such cases, subject to the right of the party to make special application to the Privy Council.

MONK, J., did not dissent, but was of opinion that the decisions had not been quite harmonious. However, the Court had now come to the conclusion that the amount demanded, without interest, was what gave the right of appeal.

The judgment was as follows :—

"Considering that it is provided by Sect. 25 of chap. 77, C.S.L.C., that whenever the right to appeal from any judgment of any Court is dependent on the amount in dispute, such amount shall be understood to be that demanded and not that recovered, if they are different;

"And considering that the amount which the appellant demanded in and by his declaration in this cause, was less than £500 sterling, to wit, a sum of $2,150, and that according to law and the practice of this Court the interest accrued since the action was served and returned into Court, cannot be added to the principal sum demanded in order to determine the right of appellant to appeal from the judgment rendered in this cause; the Court doth reject the