

Upon an action instituted by Mr. Devlin, the Superior Court has condemned the City of Montreal to pay to the plaintiff a sum of \$11,000. Both parties being dissatisfied with this judgment, each of them brought a separate appeal. This Court on the 13th instant reduced the amount of the judgment rendered by the Superior Court, and dismissed the appeal of Mr. Devlin, who was condemned to the costs of both appeals.

On the same day, the City obtained a rule for leave to appeal to the Privy Council. This rule was returned on the 16th instant. In the meantime Mr. Devlin presented in Chambers two petitions to be allowed to appeal to the Supreme Court from the two judgments rendered on the 13th, and the appeals were allowed.

Yesterday Mr. Devlin showed cause upon the rule obtained by the City for leave to appeal to the Privy Council, and has objected to its being granted, because an appeal having been allowed to the Supreme Court, no appeal can be taken to the Privy Council, at least pending the appeal to the Supreme Court.

The law with reference to such a case as this, is most unsatisfactory.

By section 17 of the Supreme Court Act, an appeal lies to the Supreme Court from every judgment rendered by this Court, in every case wherein the sum or value of the matter in dispute amounts to \$2000, or more. This appeal must be allowed by the Court or a judge within 30 days from the pronouncing of the judgment. The Act contains a provision that the judgment of the Supreme Court shall be final, and that no appeal shall be brought from such judgment to her Majesty in Council, except by virtue of the exercise of Her Royal Prerogative. The Act contains no such provision as regards appeals from the judgments of this Court to Her Majesty in Her Privy Council, and Article 1178 of the Civil Code, giving such right of appeal, has not been revoked, but has been considered as still in force, both by this Court and by the Privy Council, in several cases which have been taken to appeal and adjudicated upon since the establishment of the Supreme Court.

We have therefore two laws, the one granting an appeal from judgments of this Court to the Supreme Court, and the other granting an

appeal to the Privy Council, and both applicable to this case.

It is evident that the judge in Chambers, to whom the application was made to allow an appeal to the Supreme Court, had no right to deny to the party making the application, an appeal which the law gave him. The judge in such a case exercises a ministerial duty, and has no discretion to refuse an appeal in those cases where the law allows one, or to grant it in cases where it is denied.

Art. 1178 of the Civil Code is as imperative as the Supreme Court Act, and says:—"An appeal lies to Her Majesty in Her Privy Council, from final judgments rendered in appeal or error by the Court of Queen's Bench 3rdly, in all other cases wherein the matter in dispute exceeds the sum or value of five hundred pounds sterling."

The present case, involving several thousand dollars, is one in which an appeal clearly lies to the Privy Council, and the question arises whether this Court has any authority either to deny altogether or to suspend the exercise of a right of appeal to which the parties are entitled by law.

To suspend the adjudication upon the rule for leave to appeal until the case is determined by the Supreme Court, would be equivalent to a denial of the appeal, for the judgment of the Supreme Court would be final, and were it not final it could not be in the power of this Court to grant an appeal to the Privy Council from a judgment of the Supreme Court superseding the judgment rendered by this Court.

Whatever may be the inconveniences resulting from the allowing in the same case a double appeal, one to the Supreme Court and the other to the Privy Council, and we admit they cannot be inconsiderable, yet it seems that under the present state of the law it is impossible for this Court either to refuse the application of either party, and thereby select the tribunal to which the parties shall be bound to carry their appeal, or even to suspend the application of one of them, which in reality would have the same effect. We cannot say that the City of Montreal shall be deprived of its appeal to the highest Court established for revising judgments of this Court. And, if one of the parties must be deprived of his appeal to one of the Courts, it seems it should not be the party who