

and that Court confirmed the judgment of the Superior Court.

Thereupon the appellants appealed to the Supreme Court of Canada, and it was

*Held*, that as the sum or value of the matter in controversy between the parties in this case was the sum of \$1,500, and fell short of the appealable amount, the case was not appealable: R.S.C., c. 135, s. 29.

FOURNIER, J., *dubitante*.

Appeal quashed with costs.

*Trenholme*, for motion to quash.

*Laflamme*, Q.C., *contra*.

SNOWBALL v. WILSON.

[March 18.

S., a judgment creditor of J.N., sr., applied to the Supreme Court of New Brunswick on affidavits, to have a judgment of J. N., jr., against said J. N., sr., his father, set aside as being obtained by collusion and fraud, and in order to cover up assets of the said J.N., sr. The facts alleged in the affidavits supporting the application were: that a cognovit was given and said judgment of J. N., jr., was signed on the same day; that no account was ever rendered of the debt; that no entries were ever made by said J. N., jr., against his father; that the account for which the cognovit was given was made up from calculation and not from books; that the father had offered to have the judgment discharged on payment of a much smaller sum, and that on an examination of the father for disclosure he would not swear that he owed his son the amount, and that he had had no settlement of accounts. The affidavits in answer stated how the debt had accrued, giving the details; that there was no collusion between the father and son; that the son had frequently asked his father for a settlement, but could not get it, and that he had never been a party to or authorized any settlement. The Court below held that the applicant had failed to show fraud, and refused to set aside the judgment.

*Held*, that the decision of the Court below should be affirmed.

Appeal dismissed.

G. J. Gregory, for appellant.

*Hanington*, Q.C., and *J. A. Vanwart*, for respondent.

MACFARLANE v. THE QUEEN.

[March 18.

*Criminal law—Assault—On constable in discharge of duty—Indictment for—Service of summons under C. T. Act—Wife of defendant—Competent as witness on trial.*

A constable in attempting to serve a summons on M. for violation of the Canada Temperance Act, was assaulted by M. and his wife. On indictment for such assault as an assault on a constable in discharge of his duty, under 32-33 V., c. 20, s. 39; R.S.C., c. 162, s. 34.

*Held*, affirming the judgment of the Court below, that such section applies to the case of a constable serving a summons for violation of the Canada Temperance Act.

*Held*, also, that on the trial of such an indictment neither the defendant nor his wife is a competent witness under sec. 216 of the Act relating to procedure in criminal cases, R.S.C., c. 174.

Appeal dismissed.

*J. A. Vanwart*, for the appellant.

*R. J. Ritchie*, Sol.-Gen. of New Brunswick, for the respondent.

MARITIME BANK v. TROOP.

[March 19.

*Winding-up Act—R.S.C., c. 129, s. 57—Double liability—Set off.*

Sec. 57 of the Winding-up Act, R.S.C., c. 129, provides that "the law of set-off as administered by the Courts, whether of law or equity, shall apply to all claims upon the estate of the company, and to all proceedings for the recovery of debts due, or accruing due, to the company at the commencement of the winding up, in the same manner and to the same extent, as if the business of the company was not being wound up under this Act."

*Held*, reversing the judgment of the Supreme Court of New Brunswick, that this section does not give a right to a contributory to set off an independent debt owed to him by a company against calls made in the course of winding up proceedings either for capital or double liability.

Appeal allowed with costs.

*Barker*, Q.C., for the appellants.

*J. A. Vanwart*, for the respondent.