

lot by the vendor of the said respondent. The object of the appellant, in instituting an appeal respecting so small a sum, was to obtain the judgment of the court of appeals on a question which divided the judges of the court of King's Bench for the district of Montreal. The chief justice of the court below, (Vallières,) and Mr. justice Rolland were of opinion that the court of King's Bench continued to have jurisdiction in all hypothecary actions; Mr. Justice Gale and Mr. Justice Day were of opinion that the provincial ordinance 4th and 5th, Vict. cap. 20, had deprived the court of King's Bench of jurisdiction *in all actions*, whether hypothecary or not, for sums *under twenty pounds sterling*.

In consequence of this difference of opinion, a great number of actions had for a length of time remained undetermined; and the judges, with a view of affording public relief, had been pleased to mention, that if the parties in any cause would join in a request to that effect, one of the four judges would retire, and a judgment would be rendered by the remaining three, for the purpose of obtaining the opinion of the higher tribunal.

In consequence this cause had been heard in the absence of Mr. Justice Rolland; and Mr. Justice Gale and Mr. Justice Day, (the chief justice dissenting,) rendered judgment, declared that the action should have been brought in the district court, that the Court of King's Bench had no jurisdiction, and therefore dismissed the action.

The grounds upon which the appellant contended that the judgment of the court below ought to be reversed were:

1stly. That the powers of the court of King's Bench respecting hypothecary actions under ten pounds sterling,