EMERALD PHOSPHATE CO. *v.* ANGLO-CONTINENTAL GUANO WORK CO.

Mining lands—Bornage—Injunction—Appeal—Jurisdiction—R.S.C., c. 9.

In a case of a dispute between adjoining proprietors of mining lands, where an encroachment is complained of and it appears that the limits of the respective properties have not been legally determined by a *bornage*, the Court of Queen's Bench (appeal side) held that an injunction would not lie to prevent the alleged encroachment, the proper remedy being an action *en bornage*.

On appeal to the Supreme Court of Canada,

Held, that as the matter in controversy did not put in issue any title to land where the rights in future might be bound, the case was not appealable. R.S.C., c. 139, s. 29 (*b*).

Appeal quashed with costs.

Laflamme, Q.C., and *Cross*, for the appellant.

McCarthy, Q.C., and *Foran*, for the respondent.

BAPTIST *v.* BAPTIST.

Appeal—Final judgment—Action en reprise d'instance—Art. 439, C.C.P.—R.S.C., c. 135, ss. 2, 24, 28.

In an action brought to set aside a deed of assignment, the plaintiff died before the case was ready for judgment, and the respondent having petitioned to be allowed to continue the suit as legatee of the plaintiff under a will dated the 17th November, 1869, the appellant contested the continuance on the ground that this will had been revoked by a later will dated 17th January, 1885. The respondent replied that this last will was null and void, and upon that issue the Court of Queen's Bench for Lower Canada (appeal side), reversing the judgment of the Superior Court, declared null and void the will of 17th January, 1885, and held the continuance of the original suit by respondent to be admitted. On appeal to the Supreme Court, the respondent moved to quash the appeal on the ground that the judgment appealed from was an interlocutory judgment; and it was

Held, that the judgment was *res judicata* between the parties and final on the petition for continuance of the suit, and therefore appealable to this court. R.S.C., c. 135, s. 2 & 28. *Shaw* v. *St. Louis* (8 S.C.R. 385) followed.

Motion refused with costs.

Lafleur for motion.

Stuart, Q.C., *contra*.

[Nov. 2.

THE RICHELIEU ELECTION CASE.

Election petition—Status of petitioner—Preliminary objection—Lists of voters—Dominion Elections Act—R.S.C., c. 8, ss. 30 (b) 31, 33, 41, 54, 58, & 65—The Electoral Franchise Act—R.S.C., c. 5, s. 3.

Held, affirming the decision of GILL, J., where the petitioner's status in an election petition is objected to by preliminary objection, the evidence of his being entitled to petition against the return of the respondent being susceptible of easy proof by the production of the voters' list actually used, or a copy thereof certified by the Clerk in Chancery, R.S.C., c. 8, ss 41, 58 & 65; R.S.C., c. 5, s. 52, the production at the *enquête* of a copy certified by the revising officer of the list of voters upon which his name appears, but which has not been compared with the voters' list actually used at said election, is insufficient proof. GWYNNE and PATTERSON, JJ., dissenting.

Appeal dismissed with costs.

Morgan and *Gemmill* for appellant.

Belcourt and *Plamondon* for respondent.

[Nov. 3.

COUTURE *v.* BOUCHARD.

Supreme and Exchequer Courts Amending Act, 1891—54-55 Vict., c. 25, s. 3—Appeal from Court of Review—Case standing over for judgment—Amount necessary for right of appeal—Arts. 1178 & 1178 (a) C.C.P.

The action in this cause was for $2006, and the case was argued and taken *en delibéré* by the Supreme Court sitting in review on the 30th September, 1891, the day on which the Act 54-55 Vict., c. 25, s. 3, giving a right of appeal from the Superior Court in review to the Supreme Court of Canada, was sanctioned, and the judgment appealed from was rendered a month later. On appeal to the Supreme Court of Canada.

Held, per STRONG, FOURNIER, and TASCHEREAU, JJ., that the respondent's right could not be prejudiced by the delay of the court, and under the ruling of *Hurtubise* v. *Desmarteau* (19 Can. S.C.R. 562) the case was not appealable.

Per GWYNNE and PATTERSON, JJ.: That the case did not come within the words of s. 3, c. 25, 54-55 Vict., inasmuch as the judgment being for less than £500 sterling was not a judgment