

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, January 7, 1880.

Sir A. A. DORION, C. J.

BREWSTER, Appellant, and LAMB, Respondent.

Appeal from Court of Queen's Bench to Privy Council—Recourse of party who has failed to move for leave to appeal before the term closed.

An application was made in Chambers (Dec. 29, 1879) on behalf of the appellant, Brewster, for leave to appeal to the Privy Council. The circumstances were somewhat unusual.

The petitioner set out that on the 22nd of December, 1879, being the last day of the term, a judgment was rendered in the Court of Queen's Bench, appeal side, reforming the judgment of the Court below, but condemning the petitioner, appellant, to pay respondent Lamb a sum of \$2,985.83, with interest and costs of suit in the Court below. This judgment was susceptible of appeal to Her Majesty in Her Privy Council, and petitioner was desirous of prosecuting such appeal. But in consequence of the detention of Mr. L. H. Davidson, (the counsel specially charged with the case, on behalf of appellant,) at Caughnawaga by a snow storm, he was not present at the rendering of the judgment, and no motion for leave to appeal to the Privy Council was presented before the Court adjourned. [In fact, by error, his partner filed a motion for distraction of costs.] The petitioner offered forthwith to enter security for an appeal to the Privy Council, and concluded as follows: "Wherefore your petitioner prays that your Honor will be pleased to permit him to enter his security in appeal to Her Majesty in Privy Council, and further order that this petition do stand as a Rule for the first day of the next term of said Court of Queen's Bench, and that all further proceedings in this cause be stayed until after the hearing and determination of the Rule."

The foregoing petition was supported by the affidavit of Mr. Cushing, partner of Mr. Davidson.

The petitioner submitted that nothing in the Code of Procedure or Rules of Practice requires a motion for leave to appeal to be made to the Court, and that where such motion has not been made, the party is not deprived of the

right to put in security, and that the acceptance of such security should have the same effect as the granting of leave to appeal by the Court.

The CHIEF JUSTICE made the following order: "Petition allowed as to the offer of security; remainder rejected, with reserve of all rights to respondent."

Davidson & Cushing for Appellant, petitioner.
Girouard & Co. for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, February 3, 1880.

Sir A. A. DORION, C. J., MONK, RAMSAY, CROSS, JJ.
SAUVÉ et al. (pliffs. below), Appellants, and
VERONNEAU et ux. (defts. below), Respondents.

Division of Aven—An admission, whether judicial or extra judicial, cannot be divided, so as to make proof by a part thereof against the party making such admission. (See also Christin & Valois, 3 Legal News, 59.)

The appellants, testamentary executors of their father, the late François Sauvé, claimed from respondents \$512.48, composed of a sum of \$370 which it was alleged that François Sauvé had entrusted to the female respondent his daughter, about 1st January, 1872, to deposit in the Savings Bank at Montreal, and which she had deposited in her own name, and \$142.48, for the interest received on the \$370.

The plea was that whatever sums the female respondent had received from her father had been paid her as wages; that in July 1863, acting on her father's advice, she had refused to marry, and her father, to induce her to remain with him, agreed to pay her \$3 per month wages, and \$18 a year for clothing; that under this agreement she worked for her father from 7 July, 1863, until his death in May 1876, and what she received was in payment of her wages under the agreement.

Being examined as a witness, the female respondent stated that she had received \$360 from her father, of which sum \$42 was her share of the succession of one of her brothers, and \$318 was received as wages under the agreement above referred to.

Sir A. A. DORION, C. J. Il n'y a pas d'autre preuve au soutien de la demande que les réponses de l'intimée, et la Cour inférieure, en adjugeant que ces réponses ne pouvaient être divisées, a renvoyé l'action des appellants.