

Sup. Ct.]

LEMOIR v. RITCHIE.

[Sup. Ct.]

Canada, before the passing of the two Statutes in question.

One other question, to which considerable importance has been attached—that of the validity of the Great Seal with which the letters patent of the 7th of May, 1876, were sealed—having been settled, pending the suit, by two Acts, one of the Federal Parliament, and the other of the Legislature of Nova Scotia, need not now be discussed. I shall content myself with saying that I share the opinion expressed on this subject by the Chief Justice, Sir William Young.

After having had much doubt on the question, whether there is a right of appeal from a judgment rendered in a proceeding commenced as this has been by a motion for a rule *nisi*, I have come to the conclusion that this Court has jurisdiction in such a case, where the judgment which it shall give, whether it be to affirm or reverse the judgment appealed from, is one that may be put in execution.

In effect the 17th section, defining the appellate jurisdiction of this Court, has not declared that the appellant's exercise of that right shall depend upon the mode of procedure adopted in the Court of first instance, to enforce his rights. The word "case," employed in that section is not synonymous with "cause," it has a wider signification, and is applicable to all the procedures by means of which one arrives at a judgment upon his rights, in a Court of superior jurisdiction.

In order to give the same right of appeal in all the Provinces, it was necessary to employ an expression of as wide a signification as that. If that right had been given according to the nature of the mode of procedure, or action, the result would have been, that in certain cases, by reason of the difference of the systems of procedure existing in the different Provinces of the Dominion, a judgment upon the same question would be liable to appeal in one Province and not in another. It is without doubt to avoid a like inconvenience and to give, saving certain restrictions, the right of appeal in the general manner which the 17th section of the Supreme Court Act declares, in using this very vague expression,

that there is an appeal in cases where the following conditions are found, namely:—First, that the judgment which one wishes to appeal is a final judgment of the highest Court of last resort; secondly, in the case where the judgment is one of a Superior Court exercising a jurisdiction in the first instance, or by way of appeal, but in which the decision would be final. In order that there may be an appeal, it suffices that one or other of these conditions are found, whatever otherwise may be the manner of proceeding which may perchance be employed to arrive at a judgment. The meaning of the word "case" employed in our Act, is at least as wide as that of the word "suit," which is found in the 25th section of the Supreme Court Act of the United States, and of which Marshall, C. J., has given the following definition:—"The term (suit) is certainly a very comprehensive one, and is understood to apply to any proceeding in a Court of Justice, by which an individual pursues that remedy in a Court of Justice, which the law affords him. The modes of proceeding may be various, but if a right is litigated between the parties in a Court of Justice, the proceedings by which the decision of the Court is sought is a suit" (*Weston v. City Council of Charleston*, 2 Peters, 464).

And Story on the Constitution of the United States, vol. 2, No. 1125, p. 485. "What is a suit? We understand it to be the prosecution, or pursuit of some claim, demand, or request. In law language, it is the prosecution of some demand in a Court of Justice. The remedy for every species of wrong is, says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' The instruments whereby this remedy is obtained, are a diversity of suits, and actions, which are defined by the Mirror to be the 'lawful demand of one's right;' or as Bracton and Fleta express it, in the words of Justinian, *jus prosequendi in judicio, quod alicui debetur*."

Now the judgment in question in this cause being final, at least upon the present procedure, and rendered by a Superior Court (the Supreme Court of Nova Scotia)