

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the appeal of Allan  
and Others v. Pratt from the Court of Queen's  
Bench, Province of Quebec, Lower Canada ;  
delivered July 26th, 1888.*

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Present :

THE EARL OF SELBORNE.

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

[*Delivered by the Earl of Selborne.*]

THEIR Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgement, the amount which has been recovered by the Plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgement of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v. Leclaire* (15 Moore, P.C.C. 181), that is, that the judgement is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgement is passed has either lost what he demanded as Plaintiff or has been adjudged to pay something or to do something as Defendant. It may be that the value to the Defendant of an adverse judgement is greater than the value laid by the Plaintiff in his claim. If so, which was the case in *Macfarlane v. Leclaire*, it would be very unjust

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that he should be bound, not by the value to himself but by the value originally assigned to the subject matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the Defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side.

Therefore in principle their Lordships think the case is governed by *Macfarlane v. Leclair* upon the question of value, and they do not think it is at all affected by the circumstance that the Court below did not give effect to that objection, but gave leave to appeal. It has been decided in former cases that leave so given does not make the thing right, if it ought not to have been done.

Then it is submitted by the learned Counsel that their Lordships ought to give an opportunity for an application to be made for special leave to appeal, on the ground that not only questions of fact but also, as bearing on those facts, questions of law, and particularly a question of law which may be important, upon article 1054 of the Civil Code, are involved in the case. Of course their Lordships will not at present go into the merits of the case at all, and they will assume that there may be such a question and that it may be important; but the present question is, whether, this appeal being incompetent, they ought to give, under the circumstances of the case, an opportunity of asking for special leave to appeal. No doubt there may be cases in which the importance of the general question of law involved may induce their Lordships to give leave to appeal, though the value of the matter in dispute is not sufficient; but their

Lordships must be governed in the exercise of that discretion by a consideration of all the circumstances of each particular case. In this case they see from the manner in which it comes before them that this general question of law, if allowed to be argued on appeal, would be argued at the expense, if he did appear and go to any expense, of a man evidently too poor to undertake it. And, secondly, they see that there would be no probability whatever, if they permitted such an appeal, of their Lordships having the assistance which they must necessarily desire, whenever an important question as to the construction of an article of the Civil Code, having so large a bearing as this is suggested to have, may require to be considered and determined by them. If in any future case a similar question should arise, and should be competently brought before their Lordships, no doubt it will be decided upon its merits and not held to be finally concluded by the judgement given in this particular action. Their Lordships do not think it would be at all a satisfactory thing to allow an appeal not otherwise competent for the sake of raising in those circumstances and in that manner a question of the importance which this question is said to have. Therefore the appeal will be dismissed, but, as nobody has appeared to oppose it, there will be no costs.

