

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
E. W. Gillett Company, Limited v. Lumsden,
from the Court of Appeal for Ontario;
delivered the 28th July 1905.*

Present :

LORD MACNAGHTEN.

LORD DAVEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

THEIR Lordships are of opinion that this Appeal is incompetent. On considering the " Act respecting Appeals to Her Majesty in Her " Privy Council " (Revised Statutes of Ontario, 1897, cap. 48), it seems clear to their Lordships that an allowance of the Appeal is contemplated, and such an allowance must be one by the Court of Ontario. Having regard to the consequences that would follow from admitting an Appeal, their Lordships think it is essential that the Appeal should be admitted by the Court, and that the Court is bound to exercise its judgment in considering whether any particular case is appealable or not.

In the case before their Lordships the Court of Appeal has carefully avoided expressing any opinion. If indeed the Appeal had come forward by the direction of the Court, and it might fairly be inferred that they had considered the question whether it was of appealable value or not, it might be open, and probably would be open, to their Lordships to hear the Appeal. But in this particular case it appears from the second paragraph of the Order of the Court of Appeal of the 17th October 1904, that the Court left open the question whether the Appeal was competent or not, and in their Lordships' opinion the Appeal is not competent. They will therefore humbly advise His Majesty that the Appeal be dismissed and the Appellants must pay the costs.

