

THERSILE CARRIER ET VIR (DE- } APPELLANTS.  
FENDANTS) ..... }

1905  
\*May. 12.  
\*May 15.

AND

HENRI JOSEPH SIROIS (PLAIN- } RESPONDENT.  
TIFF)..... }

ON APPEAL FROM THE COURT OF KINGS BENCH, APPEAL  
SIDE, PROVINCE OF QUEBEC

*Appeal—Jurisdiction—Matter in controversy—Warranty of title—Future  
rights—Hypothec for rent charges—R. S. C. c. 135, s. 29.*

In an action for the price of real estate sold with warranty, a plea alleging troubles and fear of eviction under a prior hypothec to secure rent charges on the land does not raise questions affecting the title nor involving future rights so far as to give the Supreme Court of Canada jurisdiction to entertain an appeal. *The Bank of Toronto v. Le Curé et les Marguilliers de la Nativité* (12 Can. S. C. R. 25); *Wineberg v. Hampson* (19 Can. S. C. R. 369); *Jermyn v. Tew* (28 Can. S. C. R. 497); *Waters v. Manigault* (30 Can. S. C. R. 304); *Fréchette v. Simoneau* (31 Can. S. C. R. 13); *Toussignant v. The County of Nicolet* (32 Can. S. C. R. 353); and *The Canadian Mutual Loan and Investment Co. v. Lee* (34 Can. S. C. R. 224) followed. *L'Association Pharmaceutique de Québec v. Livernois* (30 Can. S. C. R. 400) distinguished.

**MOTION** to quash appeal from the judgment of the Court of King's Bench, appeal side, (1), reversing the judgment of the Superior Court, District of Kamouraska (2), and maintaining the plaintiff's action with costs.

The questions raised upon the motion are stated by His Lordship the Chief Justice in the judgment now reported.

*Stuart K.C.* for the motion.

*T. Chase Casgrain K.C.* contra.

\*PRESENT :—Sir Elzéar Taschereau C. J. and Girouard, Davies, Nesbitt and Idington JJ.

(1) Q. R. 13 K. B. 242.

(2) Q. R. 24 S. C. 438.

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The judgment of the court was delivered by

THE CHIEF JUSTICE.—The amount demanded by the plaintiff's action was \$550.10 for an instalment with interest on the price of real property sold to the defendants by the plaintiff. The defendants pleaded that they were troubled in the possession of the property conveyed to them by the plaintiff, that the property was hypothecated to guarantee the payment of an annual ground rent and that they feared eviction.

On behalf of the respondent a motion was made to quash the appeal on the ground that the Supreme Court of Canada had no jurisdiction to hear and determine appeals such as the present where the matter in controversy as disclosed by the demand was less than \$2,000, that there was no dispute involved as to the title to the lands, and no future rights were affected. The appellant contended that, under the pleadings, a question arose as to real rights, the warranty of a clear title given in the deed by the plaintiff to the defendants and that the future rights of the defendants were encumbered by the rent charge secured by hypothec upon the property.

It is conceded by the appellants that the amount in controversy between them and the respondents is insufficient to give them a right of appeal, but they contend that the controversy is one relating to the title to the land in question affecting future rights. But under the constant jurisprudence of the court, that contention cannot prevail. I have only to refer to *Bank of Toronto v. Le Curé et les Marguilliers de la Nativité* (1); *Jermyn v. Tew* (2); *Wineberg v. Hampson* (3); *Waters v. Manigault* (4); *Frechette v. Simmoneau* (5);

(1) 12 Can. S. C. R. 25.

(3) 19 Can. S. C. R. 369.

(2) 28 Can. S. C. R. 497.

(4) 30 Can. S. C. R. 304.

(5) 31 Can. S. C. R. 12.

*Toussignant v. County of Nicolet* (1) ; *Canadian Mutual Loan and Investment Co. v. Lee* (2).

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Justice.

The case of *L'Association Pharmaceutique de Québec v. Livernois* (3), relied on by the appellants has no application. In that case, the matter in controversy clearly involved the constitutionality of an Act of the Legislature and came under subsec. *a*, of sec. 29 of the Supreme Court Act, not under sec. *b*, which governs this case.

Motion granted with costs and appeal quashed with costs.

*Appeal quashed with costs.*

Solicitor for the appellants : *Lapointe & Stein*.

Solicitor for the respondent ; *S. C. Riou*.

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(1) 32 Can. S. C. R. 353.

(2) 34 Can. S. C. R. 224.

(3) 30 Can. S. C. R. 400.