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THE CANADIAN BREWERIES } APPELLANTS;
 COMPANY (OPPOSANTS) }

AND

ONÉSIME GARIÉPY (PETITIONER) . . . RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
 SIDE, PROVINCE OF QUEBEC.

*Vacating judgment—Appeal—Jurisdiction—Matter in controversy—
 Tierce opposition—Arts. 1185-1188 C.P.Q.—R.S.C. c. 135, s. 29.*

A creditor of an insolvent with a claim for \$600 filed a *tierce opposition* to vacate a judgment declaring the respondent to be the owner of the business of a restaurant and the liquor license accessory thereto, alleged to be worth over \$5,000. The opposition was dismissed on the ground that, under the circumstances of the case, the company had no *locus standi* to contest the judgment. On motion to quash an appeal to the Supreme Court of Canada,

Held, that as there was no pecuniary amount in controversy an appeal would not lie. *Côté v. The James Richardson Co.* (38 Can. S.C.R. 41, distinguished.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal (Archibald J.), which dismissed the company's *tierce opposition* with costs.

On petition by the present respondent the curator of one Herschon, an insolvent, was, by judgment of the Superior Court, District of Montreal, on 29th June, 1905, ordered to transfer to the respondent the right to carry on the business of a restaurant with

*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington, Maclellan and Duff JJ.

the license to retail liquors in connection therewith, the said business being considered worth \$5,000 or upwards. The appellants, being creditors of the insolvent to the amount of \$600, filed a *tierce opposition* asking to have the license restored to the curator to be disposed of by him for the benefit of the creditors generally. In the Superior Court, Mr. Justice Archibald held that, under the circumstances of the case, the appellants were estopped and dismissed the opposition with costs. This decision was affirmed by the judgment now appealed from.

1907
CANADIAN
BREWRIES
Co.
v.
GARIÉPY.
—

Murphy for the motion.

Atwater K.C. contra.

THE CHIEF JUSTICE.—This case is easily distinguishable from *Coté v. The James Richardson Co.* (1), upon which the appellant chiefly relied to support his contention that this court has jurisdiction to hear this appeal. In that case the direct issue between the parties was as to the ownership of a certain quantity of spool wood admittedly of a value exceeding \$2,000.

Here the appellant, a creditor of one Herschorn for the sum of \$600, by a proceeding known under the Quebec Code of Procedure as a *tierce opposition* asked that a judgment rendered *ex parte* seven months before, and to which the curator to the estate was a party, be set aside. By the judgment to which this opposition was fyled the respondent was declared to be entitled to the possession as owner of certain property then in the hands of the curator to Herschorn's estate, and the question in issue on the *tierce opposi-*

(1) 38 Can. S.C.R. 41.

1907
 CANADIAN
 BREWERIES
 Co.
 v.
 GARIÉPY.
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 The Chief
 Justice.
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tion was the right of the present appellant to have the *ex parte* judgment rendered in favour of the respondent set aside. On that issue there was no matter in controversy involving directly a question of money and this court is without jurisdiction.

See *Noel v. Chevrefils* (1).

GIROUARD J.—Without agreeing that this case is distinguishable from *Coté v. The James Richardson Co.* (2), I concur in the result.

DAVIES, IDINGTON, MACLENNAN and DUFF JJ. concurred with His Lordship the Chief Justice.

Appeal quashed with costs.

Solicitors for the appellants: *Archer, Perron & Taschereau.*

Solicitors for the respondent: *Murphy & Roy.*

(1) 30 Can. S.C.R. 327.

(2) 38 Can. S.C.R. 41.