

STROLL'S INC. (*Defendant*) APPELLANT;1966
*June 1
June 28

AND

DAME LILY GORN (*Plaintiff*) RESPONDENT.ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
APPEAL SIDE, PROVINCE OF QUEBEC*Lease and hire—Action for rental of store—Leased premises damaged by fire in adjoining building—Cross-demand in rescission of lease.*

The defendant company leased premises from the plaintiff for a term of five years at a rental of \$700 per month payable in advance. Some two years later, a fire occurred in the adjoining premises, also owned by the plaintiff. The evidence revealed that the damages to the premises occupied by the defendant were slight. However, the defendant alleged that the premises were unusable and asked for the dissolution of the lease. The plaintiff sued for the rental. The trial judge dismissed the action and annulled the lease. This judgment was reversed by the Court of Appeal. The defendant company appealed to this Court.

Held: The appeal should be dismissed.

The Court of Appeal had made a thorough examination of the evidence and its conclusions were supported.

Louage—Action pour le loyer d'un magasin—Local loué endommagé par un incendie dans un édifice contigu—Demande reconventionnelle pour faire résilier le bail.

La compagnie défenderesse a loué de la demanderesse un local pour un terme de cinq ans à un loyer de \$700 par mois payable d'avance. Quelque deux ans plus tard, un incendie s'est déclaré dans un édifice contigu appartenant aussi à la demanderesse. La preuve a révélé que les dommages occasionnés au local occupé par la compagnie défenderesse étaient minimes. Cependant, la défenderesse a allégué que les lieux loués étaient inutilisables et a demandé l'annulation du bail. La demanderesse a poursuivi pour le loyer. Le juge au procès a rejeté l'action et a annulé le bail. Ce jugement fut renversé par la Cour d'appel. La compagnie défenderesse en appela devant cette Cour.

Arrêt: L'appel doit être rejeté.

La Cour d'appel a fait un examen complet de la preuve et ses conclusions étaient supportées.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec¹, renversant un jugement du Juge Jean. Appel rejeté.

*PRESENT: Taschereau C.J. and Fauteux, Abbott, Judson and Ritchie JJ.

¹ [1965] Que. Q.B. 994.

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—

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec¹, reversing a judgment of Jean J. Appeal dismissed.

Gilles Godin, Q.C., for the defendant, appellant.

H. L. Aronovitch, Q.C., for the plaintiff, respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—This is an appeal from a judgment of the Court of Queen's Bench¹ maintaining respondent's principal action in the amount of \$2,100, as well as the incidental demand in the amount of \$8,400. The principal action was for rent for the months of May, June, July and August 1962 and the incidental demand was for rent for the months of September 1962 to August 1963 inclusive. Mr. Justice Jean, who heard the case at trial, dismissed the principal action and the incidental demand with costs. As to the cross-demand, he annulled the lease entered into by the parties on December 31, 1959, and condemned the cross-defendant to pay to Stroll's Inc., the cross-plaintiff, the sum of \$470.80, which is the proportion of the rent from January after the fire which occurred.

On December 31, 1959, the respondent, Dame Lily Gorn, leased to the appellant a store bearing civic number 77 St. Catherine St. East, in the City of Montreal. This lease was for a term of five years commencing May 1, 1960, and the rent was \$700 per month payable in advance.

On January 10, 1962, a fire occurred in adjoining premises belonging also to the respondent, but the evidence reveals that the damages were slight in the appellant's store. The appellant alleged that the premises leased were completely "inutilisable" and that this called necessarily for the dissolution of the lease "de plein droit".

Mr. Justice Hyde, of the Court of Appeal, with whom Mr. Justice Owen and Mr. Justice Badaux concurred, made a thorough examination of the evidence and I entirely agree with his appreciation of all the circumstances of this case, and with the conclusions he has arrived at.

¹ [1965] Que. Q.B. 994.

I would dismiss the appeal with costs throughout.

Appeal dismissed with costs.

*Attorneys for the defendant, appellant: Chaussé, Godin,
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*Attorneys for the plaintiff, respondent: Chait, Arono-
vitch, Klein, Salomon, Gelber & Bronstein, Montreal.*

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C.J.