

CONSUMERS' CORDAGE COMPANY, }
 LIMITED (DEFENDANT) } APPELLANT;

1944
 *Oct. 3.
 *Oct. 10.

AND

ST. GABRIEL LAND & HYDRAULIC }
 COMPANY, LIMITED (PLAINTIFF) . } RESPONDENT.

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

Appeal—Jurisdiction—Motion to quash—Claim of \$2,000 under contract of lease—Trial judge holding lease void, but granting \$1,066.66 as reasonable value for use and occupation of premises—Appellate court holding lease valid and awarding amount claimed, i.e., \$2,000, with interest from date of service of action—Appeal to Supreme Court of Canada—Amount or value of matter in controversy—Whether same is the difference between sums granted by the appellate and trial courts or whether it is the sum of \$2,000, plus interest, granted by the appellate court—Section 39, Supreme Court Act.

The respondent claimed from the appellant a sum of \$2,000 for five unpaid rental instalments under the terms of a lease of water rights and property rights. The trial judge held that such instrument, being a lease in perpetuity, was void and of no effect; but he gave judgment in favour of the respondent for \$1,066.66, amount representing a reasonable value for the use and occupation of the leased property for a certain period of time. On appeal by the respondent, the appellate court held that a valid subsisting lease terminating in 1956 was in effect and binding upon the parties and maintained the action as brought, condemning the present appellant to pay the sum of \$2,000, with interest from the date of the service of the action. The appellant having appealed to this Court, the respondent moved to quash the appeal for want of jurisdiction, on the ground that the amount of the matter in controversy was merely the difference between the sum of \$2,000, claimed in the action and awarded by the appellate court and the sum of \$1,066.66 awarded by the trial judge, i.e., a sum of \$933.34, which would be insufficient to clothe this Court with jurisdiction. (*Supreme Court Act*, s. 39).

Held that an appeal lies to this Court from the judgment appealed from. The decision of the trial court, having been set aside, is no longer in controversy in the appeal before this Court. The matter upon which this Court will have to pronounce is whether at the time of the action the lease in question was still subsisting, and the true controversy in the appeal before this Court is the full amount of the condemnation pronounced by the appellate court. Therefore, the amount of the matter in controversy is more than \$2,000, since the appellant is entitled to add to the amount of \$2,000 granted by the appellate court the interest from the date of the service of the action up to the date of the judgment of the appellate court.

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

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This case is not similar to the one where the plaintiff only recovers part of the amount claimed for in the trial court and succeeds in having the amount increased in the appellate court. *Berthiaume v. Laurier* [1934] 2 D.L.R. 797 dist.

v.
ST. GABRIEL
LAND &
HYDRAULIC
CO., LTD.

MOTION on behalf of the respondent for an order quashing the appeal to this Court, which was brought from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the trial judge, Greenshields CJ. and granting to the respondent the sum of \$2,000 with interest as claimed by the action.

R. C. Holden K.C. for the motion.

A. H. Elder K.C. contra.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—The respondent, who was the plaintiff in the Superior Court of the province of Quebec, moved to quash the appeal to this Court from the Court of King's Bench on the ground that the amount, or value, of the matter in controversy in the appeal does not exceed the sum of \$2,000, as provided in section 39 of the *Supreme Court Act*.

By its action the respondent claimed from the appellant the sum of \$2,000 for five unpaid rental instalments under the terms of a lease of water rights and property rights.

The trial judge held that the instrument in question was a lease in perpetuity and, as such, a violation of the law, and that in consequence the instrument was void and of no effect. However, he held that the appellant was in peaceable possession of the leased property up to the 1st of March, 1940, and that it must pay reasonable value for that use and occupation and he, therefore, gave judgment in favour of the respondent for \$1,066.66, with interest from the date of the institution of the action and costs.

The present appellant did not appeal from this judgment, but the respondent appealed from it to the Court of King's Bench and the latter Court reversed the judgment of the Superior Court, holding that

at the time of the institution of the action a valid subsisting lease terminating in February, 1956, was in effect and binding upon the parties.

As a consequence, the court of appeal maintained the action as brought and condemned the present appellant to pay to the respondent the sum of \$2,000, with interest from the date of the service of the action.

The appellant then appealed to this Court and the respondent now moves to quash the appeal for want of jurisdiction. He argues that the amount of the matter in controversy is merely the difference between the sum of \$2,000, claimed in the action and awarded by the judgment of the Court of King's Bench (Appeal Side), and the sum of \$1,066.66 awarded by the judgment of the Superior Court, or altogether \$933.34, which would be insufficient to clothe this Court with jurisdiction.

We cannot agree with such a view of the appeal. The judgment appealed from, and which will have to be considered by this Court, is the judgment of the Court of King's Bench, which held that the lease subsisted until 1956 and, on account of that holding, condemned the appellant to pay the sum of \$2,000, with interest from the date of the service of the action. By that judgment the decision of the Superior Court was set aside and is no longer in controversy in the appeal before this Court. The matter upon which we will have to pronounce is whether at the time of the action the lease in question was still subsisting and the amount claimed for in the declaration was due by the appellant to the respondent. The amount of that matter is more than \$2,000, since the appellant is entitled to add the interest from the date of the service of the action up to the date of the judgment in the Court of King's Bench.

This is not similar to a case where the plaintiff only recovers part of the amount claimed for in the Superior Court and succeeds in having the amount increased in the Court of King's Bench (Appeal Side). In those cases the amount in controversy is only the amount of the increase, but in the present instance the respondent succeeded on an entirely different ground from that on which the Superior Court judgment was rendered, and we think that the true controversy in the appeal before this Court is the full amount of the condemnation pronounced by the Court of King's Bench.

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CONSUMERS'
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LTD.

v.

ST. GABRIEL
LAND &
HYDRAULIC
CO., LTD.

Rinfret C.J.

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CONSUMERS' v. *Laurier* (1), where, as a result of the judgment of the
CORDAGE Co., court of appeal, the only amount of the matter in con-
LTD. troversy on the appeal to this Court was the sum of \$1,000
v. awarded by way of credit, or set-off, by the court of appeal.
ST. GABRIEL
LAND &
HYDRAULIC
Co., LTD. For these reasons, the motion to quash should be dis-
missed with costs.
Rinfret C.J.

Motion dismissed with costs.

Solicitors for the appellant: *Wainwright, Elder & Laidley.*

Solicitors for the respondent: *Heward, Holden, Hutchison,
Cliff, Meredith & Collins.*