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RAOUL TREMBLAY (DEFENDANT) APPELLANT;

*Nov. 2.

*Nov. 28.

AND

DUKE-PRICE POWER CO. (PLAINTIFF). RESPONDENT

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

Appeal—Jurisdiction—Judgment by appellate court quashing appeal for failure to give security—Matter in controversy—Supreme Court Act, section 39.

The appellant, having appealed from a judgment of the Superior Court and having apparently failed to give security within the delays prescribed by the code, the respondent obtained a certificate of default from the prothonotary and moved the appellate court to have the appeal declared abandoned. The appellate court granted the motion and from that judgment the appellant appealed to this court.

Held that there is no jurisdiction in this court to entertain the appeal. —In appeals from judgments upon demurrers or from judgments dismissing actions upon points of law, the title to the relief claimed is in controversy. Here, the only question involved is the regularity of the particular proceedings in appeal. *Gatineau Power Co. v. Cross* [1929] Can. S.C.R. 35 followed.

MOTION to quash for want of jurisdiction an appeal from a decision of the Court of King's Bench, appeal side, Province of Quebec, quashing an appeal to that court for failure by the appellant to give security.

Aimé Geoffrion, K.C., for the motion.

Gustave Monette, K.C., *contra*.

The judgment of the court was delivered by

RINFRET J.—Under the Code of Civil Procedure of the province of Quebec, proceedings in appeal must be brought within thirty days from the date of the judgment of first instance. They are brought by means of an inscription filed in the office of the court which rendered the judgment and, within prescribed delays, the appellant must give good and sufficient security that he will effectually prosecute the appeal and that he will satisfy the condemnation and pay all costs and damages adjudged in case the judgment appealed from is confirmed. (Arts. 1209, 1213 and 1214, C.C.P.)

If security be not given within the prescribed delays, the opposite party may obtain from the prothonotary a certifi-

*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crockett JJ.

cate of default and the inscription in appeal is thereupon held to be abandoned and of no effect, *saving any recourse which may appertain to the appealing party* (Art. 1213, C.C.P.)

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In this case, the appellant, having appealed from the judgment of the Superior Court, sitting in the city of Quebec, apparently failed to give security within the delays, the respondent obtained a certificate of default from the prothonotary and moved the Court of King's Bench (appeal side) to have the appeal declared abandoned. Whereupon that court rendered the following judgment:—

Considérant que le cautionnement requis par l'article 1214 du Code de procédure civile, sur le présent appel, n'a pas été fourni dans les délais prescrits par l'article 1213 du dit code;

Considérant que l'intimé a obtenu du protonotaire de la Cour Supérieure, un certificat constatant le défaut de l'appellant de fournir tel cautionnement;

Considérant que le présent appel est ainsi déserté à la suite de l'obtention du dit certificat;

La dite inscription en appel est déclarée désertée et la présente requête de l'intimée pour rejet d'appel, est accordée avec dépens.

The appeal to this Court is from the above judgment and the respondent moves to quash for want of jurisdiction on the ground, amongst others, that there is no amount involved in the appeal and that special leave was not obtained.

For the purposes of appeal to this Court, "the amount or value of the matter in controversy" depends, not on what is claimed in the action, but on what may be contested in the proposed appeal (*Dreifus v. Royds* (1); *Jack v. Cranston*) (2).

The only matter in controversy in this appeal is whether the Court of Appeal rightly decided that the appellant's proceedings should be held to have been abandoned, in view of the special provisions of the Code of Civil Procedure.

The question whether there exists jurisdiction in this Court to entertain an appeal of that kind is concluded by our decision in *Gatineau Power Co. v. Cross* (3). In fact the situation there was even more favourable to the appellant than it is here. In the *Gatineau Power* case (3), the matter in controversy was the right of appeal to the Court

(1) (1922) 64 Can. S.C.R. 346.

(2) [1929] Can. S.C.R. 503.

(3) [1929] Can. S.C.R. 35.

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of King's Bench, and it was decided that "such right was not appreciable in money." In the present appeal, the only point involved is the regularity of the appellant's particular proceedings before the Court of King's Bench. His right of appeal is not in question. If he was still within the delays, he might yet have filed a new inscription, as, under art. 1213, the proceedings are held abandoned, "saving any recourse which may appertain to the appealing party".

If, in the premises, the appellant is deprived of the means to effectively prosecute his appeal, it is not the direct result of the judgment appealed from, but only the collateral or consequential effect of that judgment in the special circumstances (*Bulger v. Home Insurance Co.*) (1).

The present appeal, contrary to what the appellant urged before us, cannot be assimilated to appeals from judgments upon demurrers or from judgments dismissing actions upon a plea of prescription or upon other points of law. That question was discussed in *Davis v. Royal Trust* (2), where reference was made to *Ville de St. Jean v. Molleur* (3) and to *Dominion Textile Co. v. Skaife* (4). In appeals of that character the right of action is involved; the matter in controversy is the title to the relief claimed. Judgments upon these matters, to borrow the expression of Lord Watson (*Dechêne v. City of Montreal*) (5), have "reference to the title or want of title in the plaintiff to institute and maintain" his suit. So that the amount or value involved in such appeals is the amount or value of the title to the claim itself. Here, the utmost relief which the appellant can obtain on the appeal is merely the right to have the Court of King's Bench entertain his particular proceedings before that court. The original claim of the appellant is not before us for judicial determination.

The motion of the respondent should be allowed and the appeal quashed with costs.

Motion granted with costs.

(1) [1927] Can. S.C.R. 451, at 453.

(2) [1932] Can. S.C.R. 203, at p. 209.

(3) (1908) 40 Can. S.C.R. 139.

(4) [1926] Can. S.C.R. 310.

(5) [1894] A.C. 640 at p. 645.