

WENCESLAS DIONNE AND OTHERS } APPELLANTS;
(PLAINTIFFS)

1927
*May 3.
*May 30.

AND

HENRI N. BIRON AND ANOTHER (DE- } RESPONDENTS.
FENDANTS)

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

Appeal—Jurisdiction—Matter in controversy—Action for damages for breach of contract—Contract price over \$2,000—Damages claimed below \$2,000.—Supreme Court Act, s. 37 (b).

The appellants sued for breach of a contract for the delivery of pasteurization machines, the contract price being \$2,250, and the appellants claiming the sum of \$1,875 as damages for such breach and the annulment of the contract.

Held that there was no jurisdiction in the Supreme Court of Canada to entertain the appeal, as the only substantial matter in controversy was the appellant's right to recover damages amounting at the most to \$1,875.

MOTION to quash for want of jurisdiction an appeal from a judgment of the Court of King's Bench, appeal side, province of Quebec, dismissing the appellants' action.

N. A. Belcourt K.C. for the motion.

E. F. Newcombe contra.

The judgment of the court was delivered by

ANGLIN C.J.C.—Motion to quash an appeal from the Court of King's Bench, Quebec, on the ground that the amount or value of the matter in controversy in the appeal does not exceed the sum of \$2,000. (*Supreme Court Act, s. 37 (b).*)

The plaintiffs sue for breach of a contract for the delivery of pasteurization machines, the contract price being \$2,250, claiming the sum of \$1,875 as damages for such breach and the annulment of the contract. No other ground for annulment than the breach in respect of which damages are claimed is alleged.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

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v.
BIRON.Anglin
C.J.C.

If the alleged breach is established and the plaintiffs are thereby entitled to recover damages, a necessary consequence is that the contract is no longer binding upon them and a formal declaration of its nullity might follow as a matter of course. There being on this hypothesis no obligation on the plaintiffs from which such declaration of nullity would relieve them, it is impossible to attach to it any money value. On the other hand, if breach of contract by the defendant has not been established, no case is made for annulment, and to grant annulment and thus deprive the defendants of any right of action they may have for failure of the plaintiffs to accept and pay for the pasteurization machines which the defendants supplied under the contract would be unwarranted.

In any aspect of the case the only substantial matter in controversy on the present appeal is the plaintiffs' right to recover damages for breach of contract amounting at the most to the \$1,875 claimed.

The motion to quash should therefore be granted with costs.

Motion granted with costs.
