

1916

*Oct. 10.
*Oct. 18.

THE MONTARVILLE LAND COM- } APPELLANTS;
PANY (DEFENDANTS) }

AND

THE ECONOMIC REALTY, LIM- } RESPONDENT.
ITED (PLAINTIFF) }

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

Appeal—Jurisdiction—Matter in controversy—"Supreme Court Act,"
s. 46 (b) and (c)—Action to remove cloud on title—Discharge of mort-
gage—Deferment of payment of accruing instalments—Title to land
—Future rights.

The judgment appealed from maintained the plaintiff's action brought to obtain an order that it should not be obliged to pay certain deferred instalments of the price of land sold to it by the defendants with warranty against all hypothecs, save one for \$2,000, until the discharge of certain other incumbrances alleged to be registered as affecting the said lands, and for costs of protest, etc., amounting to \$33.90. On a motion to quash an appeal taken from this judgment to the Supreme Court of Canada,

Held, (Duff J. taking no part in the judgment), that, as there was no amount in controversy of the sum or value of \$2,000, nor any matter in controversy relating to the title to the lands or to matters wherein future rights thereto might be bound, the Supreme Court of Canada had no jurisdiction to entertain the appeal under the provisions of section 46, sub-sections *b* and *c* of the "Supreme Court Act," R.S.C., 1906, ch. 139. *Carrier v. Sirois* (36 Can. S.C.R. 221), applied.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, District of Montreal, and maintaining the plaintiff's action with costs.

The nature of the relief asked for by the plaintiff's action is stated in the head-note. The motion to

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

quash the appeal was based on allegations that no money condemnation was asked for by the plaintiff's action except as to cost of a notarial protest, that neither the title to the land nor any future rights therein were in question, and that the entry shewn upon the certificate of the registrar of deeds relating to encumbrances on the land had no reference to a claim due either by the plaintiff or to the defendants, but the amount thereby secured appeared to be due to third persons who were not parties to the action and whose claim could not be affected thereby.

C. Dessaulles K.C. supported the motion.

St. Germain K.C. *contra*.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—This is a motion to quash an appeal from the Court of King's Bench, appeal side, Quebec, for want of jurisdiction.

The respondent company, appellant in the court below, bought from the company, now appellant, several lots of land with a clause in the deed of sale guaranteeing that they were free from certain incumbrances. The words are that the property is sold

franc et quitte de toutes hypothèques excepté celle de \$2,000 mentionnée au dit acte.

The action is brought to have it declared that the purchaser, respondent, is not obliged to pay the instalment of its purchase price, now due, until another mortgage, which appears in the registrar's certificate, is discharged. The defendant, appellant, contends that this latter mortgage did not really affect the property, and on that point the controversy turned below. Our jurisdiction is dependent upon the amount of the demand or the nature of the action. Here there is no

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amount demanded and the matter in controversy does not come within section 46, sub-sections *b* or *c* of the "Supreme Court Act." The only question in dispute is as to the fulfilment of the vendor's obligation to deliver to the respondent a property free from a mortgage other than the one mentioned in the deed. *Vide Carrier v. Sirois*(1).

I am of opinion that the motion should be granted with costs.

DUFF J. was not present at the delivery of the judgment and took no part therein.

Appeal quashed with costs.