

1911

\*May 2.  
\*May 5.

CLEOPHAS ST. AUBIN (DEFENDANT). APPELLANT;

AND

NARCISSE BIRTZ DIT DESMAR-  
TEAU (PLAINTIFF) ..... } RESPONDENT.

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

*Appeal—Jurisdiction—Débats de compte—Issue on reddition—  
Amount in controversy.*

An action (taken in the Province of Quebec) was for an order directing the defendant to render an account and, in default of *reddition*, the plaintiff claimed \$1,000. By the judgment appealed from the *reddition de compte* was ordered and, in default of compliance with the order, the defendant was condemned to pay the plaintiff the amount of \$1,000 demanded.

*Held*, that the controversy was limited to \$1,000 and the Supreme Court of Canada had no jurisdiction to entertain an appeal. *Bell v. Vipond* (31 Can. S.C.R. 175) distinguished.

**MOTION** to quash an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal, by which the plaintiff's action was maintained with costs.

The circumstances of the case are stated in the judgment now reported.

*Gervais K.C.* supported the motion to quash the appeal on the ground that the controversy involved in the cause affected merely the rectification of the accounts between the parties and the claim by the

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

plaintiff for the amount of \$1,000, and, consequently, that no appeal could lie under the provisions of the "Supreme Court Act" respecting appeals from the Province of Quebec.

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*St. Jacques*, for the appellant, contended that, in the circumstances of the case, an appeal would lie, and he cited *Bell v. Vipond* (1).

The judgment of the court was delivered by

THE CHIEF JUSTICE.—The respondent moves to quash for want of jurisdiction. This is an action to reform an account (*en réformation de compte*), in which the plaintiff alleges that his interest in the sum with respect to which the new account is claimed amounts to \$1,000. By the conclusions of the declaration it is prayed that the defendant should be ordered to render an account and, in default of his doing so, that he be condemned to pay the said sum of \$1,000. The judgment of the court below orders an account and, in default of compliance with the order, the defendant is condemned to pay the sum of \$1,000.

On these facts I am of opinion that the amount in controversy is the amount with respect to which the plaintiff claims an interest to have the account corrected, viz., \$1,000, which sum is not within the appealable limit; and the motion to quash should be granted with costs.

I distinguish this case from the case of *Bell v. Vipond* (1). In that case an account was filed pursuant to the judgment of the court and, on the discussion of the account, the conclusions of the original

(1) 31 Can. S.C.R. 175.

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declaration were amended and the plaintiff's demand increased to an amount exceeding \$2,000. See *per* Taschereau J., at page 176:

The Chief Justice.

The plaintiff, by a contestation of that account, claimed to be entitled to an amount which, though not specified, yet, by his allegations, clearly amounted to a sum exceeding two thousand dollars, withdrawing expressly the alternative conclusion of his declaration for one thousand dollars.

The motion is allowed with costs.

*Appeal quashed with costs.*

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