

JACK PONG (DEFENDANT) APPELLANT;

1926

*Oct. 5.

AND

LUM QUONG AND LUM CHONG }
 (PLAINTIFFS) } RESPONDENTS.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
 COURT OF ONTARIO

Appeal to Supreme Court of Canada—Jurisdiction—Value of matter in controversy—Parties each claiming right to lease of premises used for laundry—Elements to be considered in estimating value.

On a motion to affirm jurisdiction in the Supreme Court of Canada to entertain an appeal from a judgment of the Appellate Division of the Supreme Court of Ontario, deciding which party was entitled to a certain lease of premises used for a laundry business, the Registrar affirmed jurisdiction, taking into account, in estimating the value of the matter in controversy, the exceptional value of the premises by reason of the existing privilege of running a laundry business thereon; and his order was affirmed by the court. In such a case the question to be considered, with regard to jurisdiction, is the value of the subject matter as between the parties.

MOTION by respondents by way of appeal from the Registrar's order affirming jurisdiction.

The Appellate Division of the Supreme Court of Ontario, reversing the order of Mowat J., had declared that the defendant Pong was trustee for the plaintiffs of a certain lease of premises used in the carrying on of a Chinese laundry, and ordered that the defendant Pong assign the lease to the plaintiffs and that the plaintiffs should covenant in the assignment to indemnify the defendant against the lessee's covenants contained in the lease (1).

The defendant Pong appealed to the Supreme Court of Canada, and moved before the Registrar of that Court for an order affirming its jurisdiction to hear his appeal. The Registrar's decision, delivered 21st June, 1926, was as follows:

The sole question for determination on this motion to affirm jurisdiction, is with respect to the elements which can be taken into consideration when estimating the value of a leasehold property in view of its commercial possibilities.

In Toronto premises can not be used for the purpose of carrying on a Chinese laundry except with the approval of the ratepayers in the

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

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neighbourhood. The premises in question have received that approval. A laundry business has been established there for many years. The premises therefore have an exceptional value for this special purpose. I have no doubt on the evidence, that without this privilege, the property would not have a leasehold value sufficient to give the court jurisdiction, but with the privilege, I think the amount in controversy is more than \$2,000. I therefore affirm the jurisdiction of the court; costs in the cause.

If I am wrong in the above expressed view, there is nothing to prevent the respondent, when the case comes to be heard on the merits, from moving to quash for want of jurisdiction. No order made by me can confer jurisdiction, if otherwise there is none.

The respondents moved by way of appeal from the Registrar's order affirming jurisdiction, on the ground that the sole question at issue was the right to possession of the premises under the lease in question, and that any rights conferred upon the occupant of the premises by virtue of a license from the city of Toronto to conduct a laundry business were not appurtenant to the said lease as between the parties to this appeal.

After argument, judgment was rendered dismissing the motion with costs, the Chief Justice stating that the members of the court were all agreed that the proper question to be considered was the value of the property as between the parties, and it was impossible to say that the Registrar had erred in his appreciation of the evidence.

Motion dismissed with costs.

Fraser Raney for the motion.

Norman Sommerville K.C. contra.
