DAME T. BALTHAZAR (PLAINTIFF)... APPELLANT;

AND

ROSARIO DROUIN (DEFENDANT)..... RESPONDENT.

1945

*May 17
*June 4

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

Appeal—Jurisdiction—Conservatory attachment not accompanied with a principal demand for pecuniary condemnation—Judgment, dismissing action, affirmed by appellate court—No amount or value in controversy in the appeal—Supreme Court Act, s. 39.

The appellant's action was dismissed by the trial judge, on the ground *inter alia* that the conservatory attachment taken out by her was not accompanied with a principal demand for a pecuniary condemnation and that such a proceeding was a provisional remedy which cannot be taken out by itself without a claim, which is made the object of the principal demand. The judgment was affirmed by the appellate court and the plaintiff appealed to this Court.

Held that this Court has no jurisdiction to hear the appeal.—The moveables, on which the conservatory attachment was intended to be executed, even if they were of a value exceeding $2,000, are not in

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

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controversy in this appeal. The only matter in controversy is whether the Courts below rightly decided that a conservatory attachment is only an accessory procedure, which cannot be taken out alone; and such right is not appreciable in money. *Gatineau Power Company* v. *Cross* ([1929] S.C.R. 35) foll.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court, Archambault J. and dismissing a conservatory attachment taken out by the appellant on moveables in possession of the respondent.

Aime Geoffrion K.C. for the appellant.

Hector Langlois for the respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—The appellant's action contains only the following conclusions:—

Pourquoi la demanderesse conclut à ce que par jugement à intervenir il soit dit et déclaré: Que les effets et meubles meublants qui sont encore dans l'épicerie portant le N° 8071 de la rue St-Denis et qui sont mentionnés dans la déclaration, soient mis sous la garde de la justice; à ce que la saisie conservatoire faite en cette cause soit déclarée bonne et valable et à ce que le défendeur soit condamné aux fins des présentes. La demanderesse se réservant de prendre toutes conclusions ultérieures.

The action was dismissed by the Superior Court on the ground, amongst others, that the conservatory attachment is a provisional remedy and only a proceeding accessory to a principal demand based on a debt which is exigible, and that such a proceeding cannot be taken out by itself without a claim, which is made the object of the principal demand. That judgment was affirmed by the majority of the judges of the Court of King's Bench (Appeal Side), mainly on that ground.

The appellant now brings the case to this Court without special leave from the Court of King's Bench (Appeal Side).

It is apparent that, on the face of the conclusions, there is no amount or value in controversy in the appeal in accordance with the requirement of section 39 of the *Supreme Court Act*, and, therefore, there exists no foundation for the jurisdiction of this Court as of right.

The appellant accompanied his inscription in appeal with an affidavit to the effect that the moveables, on which the conservatory attachment was intended to be executed, were of a value of at least $2,500; but the moveables themselves, or their value, are not in controversy in this appeal. The only matter in controversy is whether the Courts below rightly decided that the appellant's proceedings could not be maintained in view of the fact that they were not accompanied with a principal demand for a pecuniary condemnation, or, in other words, that a conservatory attachment is only an accessory procedure, which cannot be taken out alone and without an accompanying principal demand. Such right is not appreciable in money (*Gatineau Power Company* v. *Cross*) (1).

Mr. Geoffrion, for the appellant, pointed to the fact that the respondent, whose effects had been seized, had the effects restored to him by giving the seizing officer, who was bound to accept them, good and sufficient sureties, who justify under oath to the amount indorsed upon the writ, with interest and costs, that he would satisfy the judgment that may be rendered; and that the sureties so given swore to an individual amount of $2,500, or a total of $5,000. This was done under article 938 of the Code of Civil Procedure; and he claimed that the sureties so given took the place of the effects that had been seized and that, accordingly, they fixed the amount or value in controversy in the appeal. We cannot accede to this ingenious argument. The total amount for which security was given is no more at stake in the present litigation than the goods themselves which it replaced in the eyes of the law.

The question at issue still remains whether the appellant was entitled to bring out a conservatory attachment without any principal demand and whether the two Courts below were right in holding that he was not. There is no amount or value in this matter and, as the appellant did not obtain, from the highest court of final resort having jurisdiction in the province of Quebec, a special leave to appeal from the judgment, the reversal of which he is now seeking, he has not succeeded in convincing us that we had jurisdiction to hear the appeal.

(1) [1929] S.C.R. 35.

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The point was not raised by the respondent and ordinarily under such circumstances the respondent would be entitled to the costs of a motion to quash. In some cases even, under similar conditions, the respondent was altogether denied any costs against the appellant. In the circumstances, however, the Court thought that the question of jurisdiction could not be disposed of without going into the merits of the case and, accordingly, decided that counsel on both sides should be heard on the whole case. In view of this, we think the respondent here should be allowed all his costs of the appeal. The present decision, of course, does not involve the approval or disapproval of the judgments of the Courts below on the merits.

The appeal should be quashed with costs as aforesaid.

Appeal quashed with costs.

Solicitor for the appellant: *Edgar Laliberté.*

Solicitor for the respondent: *Hector Langlois.*