

1929

*Nov. 4.

IN THE MATTER OF AN ARBITRATION

THE CORPORATION OF THE CITY }
 OF TORONTO (LESSOR)..... } APPELLANT;

AND

FLORENCE MARION THOMPSON, }
 ET AL. (LESSEES)..... } RESPONDENTS.

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

*Appeal—Jurisdiction—Supreme Court Act, R.S.C., 1927, c. 35, ss. 2 (b),
 36—“Final judgment”—Appeal from judgment setting aside arbit-
 rator’s award and referring matter back for reconsideration.*

An appeal from the judgment of the Appellate Division, Ont. (35 Ont. W.N. 126), setting aside the awards of the official arbitrator fixing the rentals to be paid upon the renewal of certain leases, and referring the matter back to him for reconsideration, with liberty to supplement the evidence already given, was quashed for want of jurisdiction, on the ground that the judgment appealed from was not a “final judgment” within ss. 2 (b) and 36 of the *Supreme Court Act*.

APPEAL by the City of Toronto from the judgment of the Appellate Division of the Supreme Court of Ontario (1) which allowed the present respondents’ appeals from the awards of T. H. Barton, Esquire, K.C., Official Arbitrator, fixing the respective rentals to be paid by the present respondents, as tenants, upon the renewal of certain leases by the City of properties in the city of Toronto.

The Appellate Division set aside the awards and referred the matter back to the Official Arbitrator for reconsideration, from the viewpoint of certain aspects of the case discussed in the judgment of the Appellate Division, with liberty to the parties to supplement the evidence already given.

Special leave to appeal to the Supreme Court of Canada was granted by the Appellate Division to the City, with a direction that the costs of such appeal should be costs in the cause payable by the City in any event.

G. R. Geary K.C. and *J. P. Kent* for the appellant.

Fred G. McBrien for the respondents.

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Lamont and Smith JJ.

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In the course of the argument of counsel for the appellant, the Court mentioned the question of its jurisdiction to entertain the appeal, notwithstanding the order giving special leave, and argument was heard on this question as well as on the merits. At the conclusion of the argument of counsel for the appellant, and without calling on counsel for the respondent, the judgment of the Court was delivered orally by

ANGLIN C.J.C.—We are all of the opinion that the judgment appealed from is not a final judgment within the meaning of s. 36 of the *Supreme Court Act*. The definition of a final judgment is given in s. 2 (b) of the Act, and it is perfectly clear that there must be a determination of some substantive right between the parties. In view of the fact that by the judgment appealed from all the rights of the parties are left open, this Court is without jurisdiction, and the appeal must be quashed.

Appeal quashed.

Solicitor for the appellant: *C. M. Colquhoun.*

Solicitor for the respondents: *F. G. McBrien.*

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