ST. JACQUES J. (*ad hoc*).—The appeal should be dismissed. 1932 PITRE v. THE KING.

Appeal dismissed.

Solicitor for the appellant: *C. T. Richard.*
Solicitor for the respondent: *R. P. Hartley.*

THE CORPORATION OF THE CITY OF TORONTO ..... APPELLANT; 1932 *Dec. 19. *Dec. 23.

AND

FLORENCE MARION THOMPSON AND OTHERS ..... RESPONDENTS.

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

Appeal—Jurisdiction—"Final judgment" (Supreme Court Act, R.S.C., 1927, c. 35, ss. 2 (b), 36)—Appeal from judgment setting aside arbitrator's award and referring matter back.

The Appellate Division of the Supreme Court of Ontario had (35 Ont. W.N. 126) set aside awards of the official arbitrator fixing the rentals to be paid on renewals of certain leases, and referred the matter back for reconsideration from the viewpoint of certain aspects of the case, with liberty to the parties to supplement the evidence already given. An appeal to this Court was quashed ([1930] Can. S.C.R. 120) for want of jurisdiction on the ground that the judgment of the Appellate Division was not a "final judgment" within ss. 2 (*b*) and 36 of the *Supreme Court Act*. The arbitrator again made awards, and the Appellate Division again (41 Ont. W.N. 341) set them aside and referred the matter back, in order that the arbitrator "should, upon the existing evidence, determine" the proper rentals "in conformity with the considerations laid down" in its first judgment. From this second judgment, special leave to appeal (refused by the Appellate Division) was asked from this Court.

Held: The judgment sought to be appealed from was not a "final judgment," being not distinguishable in this respect from the one previously appealed from; and this Court was without jurisdiction to entertain an appeal.

MOTION for an order granting special leave to appeal (refused by the Appellate Division) from the judgment of the Appellate Division of the Supreme Court of Ontario (1) allowing the present respondents' appeal from awards

* PRESENT:—Rinfret, Lamont, Smith, Crocket and St. Jacques (*ad hoc*) JJ.

(1) (1932) 41 Ont. W.N. 341.

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of the Official Arbitrator determining the amounts to be paid by the present respondents as rentals for the renewed terms of certain leases from the present appellant to them respectively of properties in the city of Toronto. The Appellate Division vacated and set aside the awards and referred the matter back to the arbitrator for reconsideration, with a direction that "the arbitrator must consider himself bound by the judgment affecting his previous awards," and in order "that he should, upon the existing evidence, determine in conformity with the considerations laid down in the (first) judgment of the Divisional Court what is the proper amount that should be paid by each tenant." The earlier judgment of the Appellate Division, referred to in the above quoted passages, had set aside previous awards and referred the matter back to the arbitrator for reconsideration, from the viewpoint of certain aspects of the case, with liberty to the parties to supplement the evidence already given (1). An appeal from said earlier judgment to this Court was quashed (2) 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*.

The present motion was dismissed with costs, on the ground that this Court was without jurisdiction to entertain the appeal.

G. R. Geary K.C. for the motion.

F. G. McBrien contra.

The judgment of the court was delivered by

RINFRET, J.—We are all of opinion that, from the viewpoint of jurisdiction, no distinction should be made between the judgment appealed from and the first judgment of the Appellate Division which was previously before this Court.

On a former appeal, the present respondents had appealed from earlier awards of the official arbitrator fixing the respective rentals to be paid by them as tenants upon the renewal of certain leases of properties by the City of Toronto.

(1) (1928) 35 Ont. W.N. 126. (2) [1930] Can. S.C.R. 120.

The Appellate Division then set aside the awards on the ground "that the whole matter (had) been approached in an entirely erroneous way," and referred "the matter back to the arbitrator to reconsider the case" from the viewpoint of certain aspects of the situation which, in the opinion of the court, had not been properly worked out upon the evidence and apparently had not been thought of by the arbitrator.

From that first judgment special leave to appeal to this Court was granted by the Appellate Division to the City of Toronto, with a direction that the costs of such appeal should be costs in the cause, payable by the City in any event. But, in the course of argument of counsel for the appellant, this Court mentioned the question of its jurisdiction to hear the case, 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, the court unanimously decided that the judgment appealed from was not a final judgment within the meaning of section 36 of the *Supreme Court Act* and within the definition of a "final judgment" given in section 2 (*b*) of the Act. It was held, therefore, that the Court was without jurisdiction (1).

The official arbitrator made a further award on the 16th December, 1929.

On appeal to the Supreme Court of Ontario, that court came to the conclusion that the arbitrator had "entirely disregarded the judgment of the Divisional Court"; and, for that reason, the awards were again vacated and set aside and the matters referred back a second time to the artitrator for reconsideration, in order "that he should, upon the existing evidence, determine in conformity with the considerations laid down in the (first) judgment of the Divisional Court * * * the proper amount that should be paid by each tenant."

Upon a motion made unto the Appellate Division on behalf of the City of Toronto for an order granting special

(1) [1930] Can. S.C.R. 120.

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Rinfret J.

leave to appeal to this Court from the latter judgment, leave was refused for the reason, verbally stated, "that leave could not be given because the decision of the said court * * * was not a 'final judgment'."

In our view, the second judgment does not add anything to the first judgment of the Appellate Division. All that it says is that the purport and the salient propositions of the first judgment were well known to the arbitrator; that he ought to have been guided by them; that he has disregarded them in his amended award; and that the matter should go back to him a second time with the intimation that he should determine the amount to be paid by each tenant in conformity with the considerations laid down in the first judgment.

If, as was decided by this Court, the first judgment was not a "final judgment" within the meaning of the *Supreme Court Act,* the second judgment, which, in our view, goes no further than the first, must also be held not to come within the definition of a "final judgment" as given in section 2 (*b*) of the Act. This Court is without jurisdiction, and the motion for an order granting special leave to appeal must be dismissed with costs.

Motion dismissed with costs.

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

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