LA SARCHI COMPAGNIE (*Plaintiff*) ....APPELLANT;

AND

THE FIRST NATIONAL BANK OF BOSTON (*Defendant*) ..... RESPONDENT.

1961
*Nov. 27
Dec. 15

MOTION TO QUASH

Appeals—Practice—Action in Quebec—Defendant non-resident and having no place of business there—Declinatory exception to jurisdiction—Whether judgment of appeal court a final judgment—Code of Civil Procedure, art. 94(4)—Supreme Court Act, R.S.C. 1952, c. 259, ss. 2(b), 36.

The plaintiff's claim arose out of agreements entered between the parties outside of Canada. Although the defendant did not reside or have any place of business in Quebec, the action was taken in that Province on the ground that the defendant had assets there. The trial judge dismissed the declinatory exception to the jurisdiction, but this judgment was reversed by the Court of Appeal. The plaintiff appealed to this Court where the defendant moved to quash on the ground that the judgment appealed from was not a "final judgment" within the terms of ss. 2(*b*) and 36 of the *Supreme Court Act.*

Held: The motion to quash should be dismissed.

The judgment allowing a declinatory exception and dismissing the action having finally disposed of the plaintiff's action, was a final judgment within the terms of the *Supreme Court Act. Ripstein v. Trower,* [1942] S.C.R. 107, and *Fiset v. Morin,* [1945] S.C.R. 520, referred to.

MOTION to quash for want of jurisdiction the appeal from the judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], reversing a judgment of Caron J. which had dismissed a declinatory exception. Motion dismissed.

J. de M. Marler, Q.C., for the motion.

N. A. Levitsky, contra.

The judgment of the Court was delivered by

ABBOTT J.:—Appellant's claim against respondent arises out of certain agreements alleged to have been entered into between the parties, in Italy and in the United States. Neither party resides in or has any place of business in the Province of Quebec. In its action, however, appellant alleged that the Superior Court has jurisdiction under art. 94, subpara. 4 of the *Code of Civil Procedure* by reason of the fact

*PRESENT: Taschereau, Fauteux, Abbott, Martland and Judson JJ.

[1] [1961] Que. Q.B. 702.

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that respondent has assets in the province. Respondent made a declinatory exception to the action on the ground that the Superior Court was without jurisdiction, and that exception was dismissed by the learned trial judge. His judgment was unanimously reversed by the Court of Queen's Bench[1] and appellant's action dismissed with costs. From that judgment appellant has appealed to this Court.

Respondent has moved to quash the appeal on the ground that the judgment maintaining the declinatory exception and dismissing appellant's action is not a final judgment within the terms of ss. 36 and 2(*b*) of the *Supreme Court Act*, R.S.C. 1952, c. 259, the relevant portions of which read:

> 36. Subject to sections 40 and 44, an appeal to the Supreme Court lies from a final judgment or a judgment granting a motion for a nonsuit or directing a new trial of the highest court of final resort in a province, or a judge thereof, pronounced in
>
> (*a*) a judicial proceeding where the amount or value of the matter in controversy in the appeal exceeds ten thousand dollars, or
>
> (*b*) .....
>
> 2. In this Act,
>
> (*a*) .....
>
> (*b*) "final judgment" means any judgment, rule, order or decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding.

The judgment *a quo* has finally disposed of appellant's action. No doubt any rights which appellant may have, might be asserted in another action in a foreign jurisdiction, but that does not affect the character of the judgment under appeal.

We are all of opinion that the judgment allowing a declinatory exception and dismissing the action is a final judgment within the terms of the Supreme Court Act.

That was the view taken by this Court in *Ripstein v. Trower*[2], where the judgment maintaining a declinatory exception in the lower Courts, was successfully appealed to this Court. A motion to quash was rejected and the action was subsequently proceeded with on the merits. The judgment on the motion to quash is not reported, but it was subsequently referred to with approval in *Fiset v. Morin*[3].

[1] [1961] Que. Q.B. 702.
[2] [1942] S.C.R. 107, 1 D.L.R. 691.
[3] [1945] S.C.R. 520 at 525, 3 D.L.R. 800.

The motion to quash should be dismissed with costs.

Motion dismissed with costs.

Attorney for the plaintiff, appellant: N. A. Levitsky, Montreal.

Attorneys for the defendant, respondent: Howard, Cate, Ogilvy, Bishop, Cope, Porteous & Hansard, Montreal.