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XENOPHON KOUTSOGIANNOPOULOS ALIAS PULOS (*Plaintiff*) } APPELLANT;

*May 3
June 11

AND

DAME MARY SPEROS PRAHALES ALIAS PANOS ET AL. (*Defendants*) ..... } RESPONDENTS.

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

Accounts—Action for accounting—Order made for accounting only—Court of Appeal reversing order—Appeal to Supreme Court—Motion to quash for lack of jurisdiction—Verbal application for leave to appeal—Code of civil Procedure, arts. 566 et seq.

In this action, the plaintiff asked that the defendants be ordered to render an accounting and that in default of rendering the account the defendants be ordered to pay certain sums of money. The trial judge ordered the rendering of an account, but did not order the payment of any sum of money. He came to the conclusion that the Court was not in a position to determine whether the plaintiff was entitled to any. The Court of Queen's Bench dismissed the action as it came to the conclusion that the defendants owed no accounting. The plaintiff appealed to this Court. The defendants moved to quash for lack of jurisdiction, and it was ordered that the motion to quash be heard at the same time as the merits of the case. During the hearing the plaintiff applied for leave to appeal in the event that it was decided that there was no appeal as of right.

Held: The motion to quash should be allowed and the application for leave to appeal dismissed.

There are two very distinct phases in an action for accounting. The first is to determine the right of the plaintiff to obtain an accounting, and the second is to apply arts. 567 et seq. if that right exists. Then if the defendant fails to render an account when he is condemned, the plaintiff may proceed to have such accounting made. But he cannot on the first phase be entitled to any sum of money unless the plaintiff and the defendant have both agreed to the contestations of accounts before the trial judge. In the present case, the trial judge and the Court of Appeal have pronounced themselves only on the right of the plaintiff to obtain an account. There was, therefore, no amount of money involved at this stage of the proceedings, and, consequently, this Court was without jurisdiction to hear the appeal. There was no valid reason to grant leave to appeal.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], reversing a judgment of Côté J. Appeal quashed.

J. G. Ahern, Q.C., for the plaintiff, appellant.

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

[1] [1961] Que. Q.B. 811.

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et al.

N. A. Levitsky, for the defendants, respondents.

The judgment of Taschereau, Abbott and Judson JJ. was delivered by

TASCHEREAU J.:—Haralampos Basilian Koutsogiannopoulos alias Harry Pulos, executive, of the City and District of Montreal, sued and asked in his action that the following defendants Dame Mary Speros Prahales alias Panos, wife contractually separate as to property of Haralampos, (known as Harry), Vacilikes alias Kay Speros Prahales alias Panos, and George Speros Prahales Panos, the last three Panos's in their quality of Executors and Trustees of the estate of the late Speros Theodore Prahales alias Panos; and the said George Speros Prahales Panos personally be ordered to render Plaintiff a detailed account, under art. 566 and following of the *Code of Civil Procedure,* and that in default of rendering the account within the delay fixed by the judgment, the defendants es-qualité be ordered to pay to the plaintiff the sum of $15,000, and the defendant George Panos the sum of $30,000 plus interest and costs.

Mr. Justice Côté of the Superior Court of Montreal rendered the following judgment:

FOR THESE REASONS, the Court DOTH ORDER the Defendants es qualite to render Plaintiff, within 30 days from these presents, a detailed account under oath, of the revenues belonging to Plaintiff which they have drawn, received and taken from the joint property as referred to and from System Theatre Company Limited and which should have been credited to Plaintiff, and to produce with said account all justification vouchers at the office of the Prothonotary of this Court; DOTH ORDER Defendant George Panos personally to render to Plaintiff, within 30 days, an accounting of his operation of the Candy and Refreshment Department administered by him for the period extending from 1937 to 1948, and to produce said account under oath with vouchers connected therewith at the office of the Prothonotary of this Court; the whole with costs against the Defendants including the costs of Exhibits.

The learned trial judge merely ordered the rendering of an account by the defendant-respondents, but did not order the payment of any sum of money. He came to the conclusion that the Court was not in a position to determine whether the plaintiff was entitled to anything, and the judgment therefore only concerns the rights of the appellant to an accounting. The Court of Queen's Bench (Appeal Side)[1]

[1] [1961] Que. Q.B. 811.

allowed the appeal, Rinfret J. dissenting, and reached the conclusion that the respondents owed no accounting to the appellant, and dismissed the action with costs.

In an action for accounting, there are two very distinct phases. The first to be determined is the right of the plaintiff to obtain an accounting (566 C.C.P.), and secondly, if that right does exist, then the dispositions of 567 C.C.P. and following have to be applied. If the defendant fails to render an account when he is condemned, the plaintiff may proceed to have such accounting made in the manner mentioned in art. 568 (578 C.C.P.). He cannot on the first issue, that is on the right to an accounting, be entitled to any sum of money, unless the plaintiff and the defendant have both agreed to the contestations of the accounts before the trial judge. See *Racine v. Barry*[1]; *Chartrand v. Tremblay*[2]; *Cousineau v. Cousineau*[3].

Here, this is not the case. The trial judge and the Court of Appeal have pronounced themselves only on the right of the plaintiff to obtain an accounting. There is, therefore, no amount of money involved at this stage of the proceedings.

On February 19, 1962, the respondents filed a motion to quash on the ground that this Court had no jurisdiction to hear this appeal, but it was ordered that the motion be heard at the same time as the merits of the case, which was then on the roll, so that the Court be in a better position, in the light of all the facts, to determine whether or not it had jurisdiction.

In view of what I have previously said, I believe that this Court is without jurisdiction to hear this appeal, and that the motion to quash should be granted with costs of such a motion.

At the hearing, a verbal application was made by counsel for the appellant asking for leave to appeal, but I see no valid reason why this request should be granted. This motion should be dismissed without costs.

The judgment of Fauteux and Martland JJ. was delivered by

MARTLAND J.:—The respondents in this appeal applied to quash the appeal on the ground that this Court did not have jurisdiction to hear it because there was no money amount

[1] [1957] S.C.R. 92. [2] [1958] S.C.R. 99.
[3] [1949] S.C.R. 694.

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involved in the matter. Following argument on that application, it was ordered that the motion be heard at the same time that the appeal was argued on the merits. The main issue was fully argued and counsel for the appellant applied for leave to appeal in the event that it was decided that there was not an appeal as of right. Having heard full argument on the merits of the appeal, I would have been inclined to grant that application. However, in view of the conclusions reached by the majority of the Court, there is no point in expressing any final view on this point.

Motion to quash granted with costs; Motion for leave to appeal dismissed without costs.

Attorneys for the plaintiff, appellant: Hyde & Ahern, Montreal.

Attorney for the defendant, respondent: N. A. Levitsky, Montreal.