

1928
*Mar. 5.

DOMINION CARTAGE COMPANY (DE-
FENDANT)

} APPELLANT;

AND

OSCAR CLOUTIER (PLAINTIFF) RESPONDENT.

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

*Appeal—Jurisdiction—Amount in controversy—Inclusion of interest in
computing amount—Supreme Court Act, ss. 39, 40*

When the judgment of a court of first instance for recovery of a sum of
money is affirmed by an appellate court (in this case the judgment
was varied by reducing the plaintiff's recovery from \$3,008.75 to
\$2,000), the interest running on the judgment of the court of first in-

*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and
Lamont J.

stance up to the date of the judgment of the appellate court must be included in computing the amount in controversy in the appeal to this court, because the judgment appealed from is necessarily the judgment of the appellate court. *Hamilton v. Evans* ([1923] S.C.R. 1) ref.

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DOMINION
CARTAGE
Co.
v.
CLOUTIER.

MOTION to quash appeal for want of jurisdiction.

The action was to recover the sum of \$7,600.74 for damages resulting from an automobile accident. The Superior Court maintained the action for a sum of \$3,008.75 with interest and costs.

Upon appeal to the Court of King's Bench, this amount was reduced to \$2,000.

Louis Côté for the motion.

G. Coote contra.

After hearing argument by counsel for the motion the judgment of the court was orally delivered by

ANGLIN C.J.C.—We are all of the opinion that this motion must fail, because what the Court of King's Bench did was in effect to reduce the plaintiff's recovery from \$3,008.75 to \$2,000. Properly construed, the judgment of that court awards the plaintiff interest from the date of the judgment of the Superior Court. Otherwise the words in the judgment of the Court of King's Bench "with interest" are meaningless and without effect.

The motion is dismissed with costs.

Perhaps I should add, for the purpose of making the matter clear, that the court is of the opinion that, when interest runs from the date of the judgment of the court of first instance to the date of the judgment of the court of appeal, that interest must be included in computing the amount in controversy in the appeal to this court, because the judgment appealed from is necessarily the judgment of the court of appeal. We so determined in *Briggs v. Eggert* (1), a decision which would seem to be inconsistent with *Hamilton v. Evans* (2).

Motion refused with costs.

(1) [1928] S.C.R. 154.

(2) [1923] S.C.R. 1.