

1924
 *Feb. 11.
 *Feb. 12.

J. A. OUELLET (PLAINTIFF) APPELLANT;
 AND
 LEVESQUE & GUENARD, LTEE.
 (DEFENDANT);

AND
 L. P. DESBIENS AND OTHERS (OPPO- } RESPONDENTS.
 SANTS) }
 ADELARD TREMBLAY (PLAINTIFF) APPELLANT;
 AND
 LEVESQUE & GUENARD, LTEE.
 (DEFENDANT);

AND
 L. P. DESBIENS AND OTHERS (OPPO- } RESPONDENTS.
 SANTS) }

Appeal—Jurisdiction—Opposition afin de conserver—Amount in controversy—“Supreme Court Act,” s. 39 (a) as enacted by 10-11 Geo. V, c. 32, s. 2.

The plaintiffs contested an opposition *afin de conserver* for \$18,580 filed by the respondents on the proceeds of a sale of property upon the execution by the plaintiffs against the defendant of judgments obtained in each case for an amount less than \$2,000. The plaintiffs appealed from the judgments dismissing their contestation.

Held that, “the amount or value of the matter in controversy in the appeal” being under \$2,000, these cases were not appealable under section 39 (a) of the Supreme Court Act as enacted by 10-11 Geo. V, c. 32. *Kinghorn v. Larue* (22 Can. S.C.R. 347) followed.

Coté v. Richardson (38 Can. S.C.R. 41) and *Pulos v. Lazanis* (57 Can. S.C.R. 337) are no longer applicable as section 46 of the Supreme Court Act (R.S.C., c. 139), has been repealed by the above-mentioned statute.

MOTIONS to quash for want of jurisdiction appeals from the judgments of the Court of King’s Bench, appeal side, province of Quebec, affirming the judgments of the Superior Court, District of Roberval, and maintaining the respondents’ oppositions *afin de conserver*.

Simon Lapointe K.C. for the motion.

Belcourt K.C. for the appellant Ouellet and *Auguste Lemieux K.C.* for the appellant Tremblay, *contra*.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—In each of these cases the appellant, who had recovered a judgment against the debtor Lévesque & Guénard, Ltée, seized the property of the

*PRESENT: Sir Louis Davies C.J. and Idington, Duff, Mignault and Malouin JJ.

debtor, consisting of a quantity of pulpwood, and the respondents Desbiens, et al., to whom the property had been pledged, by way of *opposition afin de conserver*, set up a claim to be paid by preference out of the proceeds. In each case the amount of the plaintiff's claim was much less than \$2,000, the combined claims of both amounting to less than \$1,000.

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The respondents move to quash the appeals on the ground that the amount involved is less than \$2,000 and the question thus raised is the point to be decided.

The relevant provision of the "Supreme Court Act" is sec. 39 (a) as enacted by 10-11 Geo. V, c. 32, s. 2. It will be observed that this provision contains nothing corresponding to s.s. 2 of sec. 46 of c. 139 R.S.C., that the "amount in dispute" shall be

understood to be that demanded and not that recovered if they are different,

sec. 46 having been expressly repealed by sec. 2 of the Act of 1920. Since the amendment the amount or value of the matter in controversy in the appeal must exceed \$2,000, unless special leave to appeal is obtained.

The decision of this question, we think is governed by the judgment of this court in *Kinghorn vs. Larue* (1).

On facts indistinguishable in any pertinent sense it was there held conformably to the principle of *Macfarlane vs. Leclaire* (2), that the "amount in controversy" was the amount claimed by the appellant plaintiff and not the amount or value of the claim of the respondent opposant.

Mr. Belcourt relies upon the subsequent decisions in *Coté vs. Richardson* (3), and *Pulos vs. Lazanis* (4). The first of these decisions is expressly based upon the provision above mentioned of sec. 46 (2). That provision, it was considered, required the court to resort to the demand in the intervention to determine the "amount in controversy"; and the later decision proceeded upon the authority of the earlier.

We have come to the conclusion that the provision in question having been repealed the last-mentioned decisions are no longer applicable; that the decision in *Kinghorn vs.*

(1) [1893] 22 Can. S.C.R. 347.

(3) [1906] 38 Can. S.C.R. 41.

(2) 15 Moore P.C. 181.

(4) [1918] 57 Can. S.C.R. 337.

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Larue (1) ought to be followed in passing upon questions arising under sec. 39 (a); and accordingly that the "amount in controversy" on the present appeals is, within the meaning of that subsection, less than \$2,000.

The appeals should be quashed with costs of the motions.

Motions granted with costs.

(1) 22 Can. S.C.R. 347.
