

CANADA / JUDGMENT

Canadian Breweries Co. v. Gariépy

(1907) 38 SCR 236

COURT

Supreme Court of Canada

DECIDED

21 February 1907

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Canadian Breweries Co. v. Gariépy Collection Supreme Court Judgments Date 1907-02-21 Report

(1907) 38 SCR 236 Judges Fitzpatrick, Charles; Girouard, Désiré; Davies, Louis Henry; Idington, John; MacLennan, James; Duff, Lyman Poore On appeal from Quebec Subjects Civil procedure Decision Content Supreme Court of Canada Canadian Breweries Co. v. Gariépy (1907) 38 SCR 236 Date: 1907-02-21 The Canadian Breweries Company (Opposants) Appellants; And Onésime Gariépy (Petitioner) Respondent. 1907: Feb. 19; 1907: Feb. 21. Present:—Fitzpatrick C.J. and Girouard, Davies, Idington, MacLennan and Duff JJ. ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC. Vacating judgment—Appeal—Jurisdiction—Matter in controversy— Tierce opposition— Arts. 1185-1188 C.P.Q.—R.S.C. c. 135, s. 29. A creditor of an insolvent with a claim for \$600 filed a tierce opposition to vacate a judgment declaring the respondent to be the owner of the business of a restaurant and the liquor license accessory thereto, alleged to be worth over \$5,000. The opposition was dismissed on the ground that, under the circumstances of the case, the company had no locus standi to contest the judgment. On motion to quash an appeal to the Supreme Court of Canada, Held, that as there was no pecuniary amount in controversy an appeal would not lie. Côté v. The James Richardson Co. (38 Can. S.C.R. 41, distinguished. Motion to quash an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal (Archibald J.), which dismissed the company's tierce opposition with costs. On petition by the present respondent the curator of one Herschon, an insolvent, was, by judgment of the Superior Court, District of Montreal, on 29th June, 1905, ordered to transfer to the respondent the right to carry on the business of a restaurant with the license to retail liquors in connection therewith, the said business being considered worth \$5,000 or upwards. The appellants, being creditors of the insolvent to the amount of \$600, filed a tierce opposition asking to have the license restored to the curator to be disposed of by him for the benefit of the creditors generally. In the Superior Court, Mr. Justice Archibald held that, under the circumstances of the case, the appellants were estopped and dismissed the opposition with costs. This decision was affirmed by the judgment now appealed from. Murphy for the motion. Atwater K.C. contra. THE CHIEF JUSTICE.—This case is easily distinguishable from Cote v. The James Richardson Co.[1], upon which the appellant chiefly relied to

support his contention that this court has jurisdiction to hear this appeal. In that case the direct issue between the parties was as to the ownership of a certain quantity of spool wood admittedly of a value exceeding \$2,000. Here the appellant, a creditor of one Herschorn for the sum of \$600, by a proceeding known under the Quebec Code of Procedure as a tierce opposition asked that a judgment rendered ex parte seven months before, and to which the curator to the estate was a party, be set aside. By the judgment to which this opposition was fyled the respondent was declared to be entitled to the possession as owner of certain property then in the hands of the curator to Herschorn's estate, and the question in issue on the tierce opposition was the right of the present appellant to have the ex parte judgment rendered in favour of the respondent set aside. On that issue there was no matter in controversy involving directly a question of money and this court is without jurisdiction. See Noel v. Chevrefils[2]. GIROUARD J.—Without agreeing that this case is distinguishable from Côté v. The James Richardson Co.[3], I concur in the result. DAVIES, IDINGTON, MACLENNAN and Duff JJ. concurred with His Lordship the Chief Justice. Appeal quashed with costs. Solicitors for the appellants: Archer, Perron & Taschereau. Solicitors for the respondent: Murphy & Roy.

[1] 38 Can. S.C.R. 41.

[2] 30 Can. S.C.R. 327.

[3] 38 Can. S.C.R. 41.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/15245/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/canadian-breweries-co-v-gari-py-1907>

Prepared on 27 October 2026 · Esheria