

appeal from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), and desiring to give the parties an opportunity of having the question of jurisdiction decided by the full court, granted an application to allow the payment of \$500 into court as security for the costs of the appeal, as the time for appealing from the said judgment would elapse before the next sittings of the Court.

On a motion to quash for want of jurisdiction before the full court, it was

Held, 1. That a judgment of the Court of Queen's Bench for Lower Canada (appeal side), quashing a writ of appeal on the ground that the writ of appeal had been issued contrary to the provisions of the Art. 1116, C.C.P., is not "a final judgment" within the meaning of s. 28 of the Supreme and Exchequer Courts Act. (*Shaw v. St. Louis*, 8 Can. S.C.R., 387, distinguished.)

2. Per RITCHIE, C.J., and STRONG, TASCHEREAU, and PATTERSON, JJ., that the Court has no jurisdiction where the amount in controversy upon an appeal by the defendant has not been established by the judgment appealed from. Supreme and Exchequer Courts Act, s. 29.

Appeal quashed with costs.

F. X. Archambault, Q.C., for respondent.

H. Abbott, Q.C., contra.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

Q.B.D.]

[Jan. 14.

MAGEE *v.* GILMOUR.

Landlord and tenant—Expiration of term—Notice to quit—Sub-lease—Overholding tenant.

This was an appeal by the defendants from the judgment of the Queen's Bench Division, reported 17 O.R., 620, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 26th and 27th of November, 1889.

The Court, agreeing with the judgment below, dismissed the appeal with costs, holding that the tenancy, though by oral lease void under the Statute of Frauds, was a tenancy for

a term certain, and not from year to year; that the sub-tenancy came to an end with the tenancy, and that the subsequent circumstances, fully set out in the judgment below, did not operate to create a new term as between the sub-tenants and the plaintiff.

McCarthy, Q.C., and *W. H. Barry* for the appellants.

J. H. Macdonald, Q.C., for the respondent.

Q.B.D.] ANDERSON *v.* FISH.

Sale of goods—Stoppage in transitu—Consignor and consignee—Right of carriers to prolong period of transitus.

This was an appeal by the plaintiff from the judgment of the Queen's Bench Division, reported 16 O.R., 476, and came on to be heard before this Court (HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, JJ.A.) on the 14th of November, 1889.

The Court dismissed the appeal with costs, agreeing with and adopting the reasons for judgment of the majority in the Court below.

G. T. Blackstock for the plaintiff.

J. B. Clarke for the defendant.

Q.B.D.]

MANDIA *v.* MCMAHON.

Contract—Breach—Measure of Damages.

The defendant, who was a contractor for certain work at Lancaster, Ont., entered into an agreement with the plaintiffs that if they would go to New York and procure about 200 labourers, he would give them work at \$1.25 a day.

The plaintiffs were allowed as damages for the breach of this agreement, \$25, their expenses in going to and returning from New York, and \$700, the amount of advances made by them to certain of the labourers to pay their fares from New York. They were not allowed commission that would have been received by them from the men if employment had been furnished.

Judgment of the Q.B.D. affirmed.

McCarthy, Q.C., and *Aylesworth* for the appellant.

H. Symons for the respondents.

Co. Ct. Hastings.]

JOHNSON *v.* HOPE.

Assignments and preferences—Bankruptcy and insolvency—Bills of sale and chattel mort-