

1906  
 \*Nov. 21.  
 \*Nov. 22.

THE CANADA CARRIAGE COM- }  
 PANY AND OTHERS (PLAINTIFFS) . . } APPELLANTS;

AND

E. A. LEA, MAUD C. LEA AND A. C. }  
 LEA (DEFENDANTS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Appeal—Jurisdiction—New trial—Discretion—Ontario Appeals—60 & 61 V. c. 34.*

*Per* Fitzpatrick C.J. and Duff J.—Sec. 27 of R.S.C. ch. 135 prohibits an appeal from a judgment of the Court of Appeal for Ontario granting, in the exercise of judicial discretion, a new trial in the action.

*Per* Davies J.—Under the rule in *Town of Aurora v. Village of Markham* (32 Can. S.C.R. 457) no appeal lies from a judgment of the Court of Appeal for Ontario on motion for a new trial unless it comes within the cases mentioned in 60 & 61 Vict. ch. 34 or special leave to appeal has been obtained.

Appeal from judgment of the Court of Appeal (11 Ont. L.R. 171) quashed.

**A**PPEAL from a decision of the Court of Appeal for Ontario (1) granting to the defendant Maud C. Lea a new trial if she chose on payment of costs of the former trial and of the appeal and reversing the judgment against A. C. Lea, and dismissing the action as to him.

The action was brought by the appellants on behalf of themselves and all other creditors of the defendant E. A. Lea to set aside a deed of land and a bill of sale of chattels made by him to the defendant Maud

\*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington and Duff JJ.

(1) 11 Ont. L.R. 171.

C. Lea as being fraudulent under the Statute of Elizabeth. The plaintiffs also claimed damages from the defendant A. C. Lea for having conspired with the other defendants to procure such conveyances to be made.

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At the trial the conveyances were set aside, the defendant E. A. Lea ordered to pay the claims of creditors and the three defendants to pay the costs, The Court of Appeal reversed this judgment, dismissing the action as against A. C. Lea, granting Maud C. Lea the option of a new trial on payment of all the costs or else the judgment as against her to stand. The plaintiffs appealed.

*Shepley K.C.* for the respondents, takes exception to the jurisdiction so far as the appeal against the respondent Maud C. Lea is concerned.

*Lynch-Staunton K.C.* for the appellants, *contra.*

THE CHIEF JUSTICE.—The Supreme Court of Canada has appellate, civil and criminal jurisdiction throughout Canada.

And appeals lie:

1st. From any *final judgment* of the highest court of final resort in cases in which *the court of original jurisdiction is a superior court.*

*The exceptions* are as to proceedings by way of *habeas corpus*, *certiorari* or prohibition in criminal cases, and in criminal cases except as provided in Criminal Code.

2nd. From any *final judgment* of the highest court of final resort where the action, suit, cause, matter or other judicial proceeding *has not originated in a superior court* in certain enumerated cases.

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3rd. From the judgment *whether final or not* of the highest court of final resort where the court of original jurisdiction is a superior court.

- (a) in motions to enter verdict or nonsuit;
- (b) upon any motion for a new trial;
- (c) in equity cases.

4th. There is no appeal as of right from any judgment of the Court of Appeal for Ontario unless

- (a) the title to real estate is in question;
- (b) the validity of a patent is affected;
- (c) the matter in controversy *in the appeal* exceeds the sum or value of \$1,000.
- (d) the matter in question relates to taking of an annual or other rent, duty, fee, etc.

5th. No appeal shall lie from orders made in the exercise of judicial discretion.

This appeal is clearly covered by the decisions of this court of *Barrington v. The Scottish Union and National Ins. Co.*(1), and *The Accident Insurance Co. of North America v. McLachlan*(2). In the latter case it is pointed out that the order for a new trial made in the court below was

in the exercise of its discretion for the purpose of eliciting further information as to the facts,

and that therefore no appeal would lie. In the present case it is expressly stated in the judgment of the Court of Appeal that, in its opinion, this was a case in which the court should exercise the discretion vested in it to direct a new trial as respects the defendant Maud C. Lea inasmuch as a most material point in the case had been left by the evidence in a state of uncertainty.

(1) 18 Can. S.C.R. 615.

(2) 18 Can. S.C.R. 627.

GIROUARD J.—Without committing myself to everything advanced by the learned Chief Justice, I agree with him in the conclusion.

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DAVIES J.—I agree in the result, and cannot but think that the case of *The Town of Aurora v. The Village of Markham* (1) is applicable and conclusive.

IDINGTON and DUFF JJ. also concurred in the judgment quashing the appeal.

*Appeal quashed with costs.*

The argument then proceeded on the appeal against A. C. Lea and after hearing counsel for the appellants, the court dismissed the appeal with costs.

*Appeal dismissed with costs.*

Solicitors for the appellants: *Staunton & O'Heir.*

Solicitors for the respondent A. C. Lea: *Lees, Hobson & Stephens.*

Solicitor for the respondent Maud C. Lea: *J. Y. Murdoch.*

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(1) 32 Can. S.C.R. 457.