1911

*March 23.
*June 1.

THE CROWN LIFE INSURANCE COMPANY (DEFENDANTS) ..... APPELLANTS;

AND

CATHERINE IDA SKINNER (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Appeal—Final judgment—Action for commissions—Reference—Reservation of further directions and costs.

In an action against an insurance company for agent's commissions on policies and renewals the trial judge gave judgment for the plaintiff, ordered an account to be taken and reserved further directions and costs. His judgment was affirmed by the Court of Appeal.

Held, Fitzpatrick C.J. dissenting, that the decision of the Court of Appeal was not a final judgment from which an appeal would lie to the Supreme Court of Canada.

MOTION to quash an appeal from a decision of the Court of Appeal for Ontario affirming the judgment at the trial in favour of the plaintiff.

The plaintiff, as executrix of her husband, who had been an insurance agent, sued the Crown Life Ins. Co. for commissions on policies and renewals alleged to have been earned by said agent. The company denied liability and counterclaimed for money claimed to be due them from the agent. The trial judge gave judgment for the plaintiff, ordered a reference to take an account and reserved further direc-

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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tions and costs. The Court of Appeal having sustained this judgment the company sought to appeal to the Supreme Court of Canada. The respondent, plaintiff, moved to quash the appeal.

G. F. Henderson K.C. for the motion.

Mowat K.C. contra.

THE CHIEF JUSTICE (dissenting).—In my opinion the motion to quash this appeal should be dismissed with costs.

DAVIES J.—I take no part in the judgment on this motion, being interested.

IDINGTON J.—The question is raised of our jurisdiction to hear this appeal. The learned trial judge found that the plaintiff (now respondent) was entitled to an account and directed a reference to take such account and report, and reserved further directions and subsequent costs, and the Court of Appeal upholds the judgment.

Can it be said that this is a final judgment ? The answer appears in the following cases; *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.*(1), where an order to enter speedy judgment was held not a final judgment, as the clerk had to compute the amount. *The Ontario and Quebec Railway Co.* v. *Marcheterre*(2), where the Court of Queen's Bench for Lower Canada had quashed an appeal to that court from the Court of Review, and it was held such judgment, though ap-

(1) 19 Can. S.C.R. 434. (2) 17 Can. S.C.R. 141.

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parently concluding the parties' rights, was not such a final judgment as the "Supreme and Exchequer Courts Act" designated such.

The claim was for five thousand dollars. The plaintiff had been found, as here, entitled to recover and a reference directed to determine the damages, but no report thereon at the time of this attempted appeal.

The Bank of British North America v. *Walker* (1), where a judgment overruling demurrer held not final. *Griffith* v. *Harwood* (2), where a judgment affirming the dismissal of a plea of prescription held not final when other pleas on the record undisposed of. *The Canadian Pacific Railway Co.* v. *The City of Toronto* (3), where it was held that a ruling by a master on the reference as to title was not a final judgment.

These are not, by any means, all, but specimens illustrative, in many ways, of the view this court has taken of the words "final judgment.' '

And in each of these cases, and in others of like kind, there could not be a doubt but that, in a more or less extensive sense, the rights of the litigants had been finally bound; yet the judgments were not final in the sense held to be the meaning in the "Supreme and Exchequer Courts Act" and, hence, no appeal could lie.

Another case was *The City of Toronto* v. *Metallic Roofing Co.* (4), where the court rendered a judgment which I thought then, and still think, was in conflict with the foregoing cases.

(1) Cass. Dig. (2 ed.) 214, 425.
(2) 30 Can. S.C.R. 315.
(3) 30 Can. S.C.R. 337.
(4) 37 Can. S.C.R. 692; Cam. S.C. Prac. 17; Cout. Cas. 388.

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So matters stood till *Wenger* v. *Lamont*(1), which was a case of a judgment and reference to take accounts and this court held no appeal could lie.

In that case the judgment of reference was not quite the same as in this case, but, on the other question of the amount involved in the controversy, that could be no doubt that, outside the record, it was shewn, as the late Mr. Justice Girouard pointed out in dissenting, the evidence so far as taken at the trial disclosed a case involving more than a thousand dollars.

The judgment not being final, I am not much concerned as to amount.

I think this motion should be allowed with costs.

DUFF J.—It seems to me to be very clear that the judgment in this case is not a final judgment as that phrase has been interpreted in this court and in the courts in England for the purpose of deciding controversies respecting the right of appeal. *The Rural Municipality of Morris* v. *The London and Canadian Loan and Agency Co.*(2); *Ex parte Moore*(3), *per* Brett M.R., at pages 633 and 634.

ANGLIN J.—I am satisfied that the judgment from which it is sought to appeal is not a final judgment within the meaning of sub-section (*c*) of section 2 of the "Supreme Court Act," as interpreted in the decisions of this court.

It was not suggested that, although it be not a final judgment, there is a right of appeal from it under any other provision of the statute.

(1) 41 Can. S.C.R. 603. (2) 19 Can. S.C.R. 434.
(3) 14 Q.B.D. 627.

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The motion to quash therefore prevails.

There is nothing which can be regarded as amounting to a special reason for granting leave to appeal.

The respondent is entitled to her costs of the application.

Motion refused with costs.

Solicitors for the appellants: *Hodgins, Heighington & Bastedo.*

Solicitors for the respondent: *Millar, Ferguson & Hunter.*