1914

*Jan. 1.
*Feb. 3.

JOHN J. DORAN AND OTHERS (DEFENDANTS) ..... APPELLANTS;

AND

FRANK JEWELL (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Appeal — New right of appeal — Statute — Application to pending actions.

An Act of Parliament enlarging the right of appeal to the Supreme Court of Canada does not apply to a case in which the action was instituted before the Act came into force. *Williams* v. *Irvine* (22 Can. S.C.R. 108); *Hyde* v. *Lindsay* (29 Can. S.C.R. 99) and *Colonial Sugar Refining Co.* v. *Irving* ([1905] A.C. 369) followed.

MOTION referred to the court by the registrar for an order to have the jurisdiction of the court to hear the appeal affirmed.

The action was to obtain possession of goods or to recover their value. In the court of first instance judgment was given for the plaintiff with a reference to ascertain the value of the goods and report. This judgment was affirmed with a variation by the Appellate Division. Under the jurisprudence no appeal would lie to the Supreme Court of Canada unless the amendment to the "Supreme Court Act," which came into force on June 6th, 1913, applied to the case. The judgment of the trial judge was delivered on July 4th, 1913, and that of the Appellate

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

Division on Nov. 21st, 1913, but the action was commenced before the Act came into force.

W. L. Scott for the motion referred to *Couture* v. *Bouchard*(1), and attempted to distinguish *Colonial Sugar Refining Co.* v. *Irving*(2).

Caldwell, contra, cited *Williams* v. *Irvine*(3); *Hyde* v. *Lindsay*(4); *Colonial Sugar Refining Co.* v. *Irving*(2).

THE CHIEF JUSTICE and DAVIES J. were of opinion that the motion should be refused.

IDINGTON J.—Having regard to the principles upon which this court proceeded in the case of *Hyde* v. *Lindsay*(4), and other cases cited therein, and the Judicial Committee of the Privy Council in the case of *Colonial Sugar Refining Co.* v. *Irving*(2), I do not think this motion should succeed.

DUFF J.—I should refuse this motion.

ANGLIN J.—This motion is concluded adversely to the appellant by the authority of *Williams* v. *Irvine* (3), and *Hyde* v. *Lindsay*(4). See, too, *Colonial Sugar Refining Co.* v. *Irvine*(2).

BRODEUR J.—This is an application to affirm the jurisdiction of this court.

The whole point is whether the amendment of 1913 to the "Supreme Court Act" as to final judg-

(1) 21 Can. S.C.R. 281.
(2) [1905] A.C. 369.
(3) 22 Can. S.C.R. 108.
(4) 29 Can. S.C.R. 99.

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ments applies to a case in which the action began prior to the amendment, but where the judgment appealed against was rendered after the passing of the amendment.

That amendment has virtually created a right of appeal which did not exist before.

This court had decided in those last years that judgments ordering a reference were not final judgments and could not be appealed.

Clarke v. *Goodall*(1); *Crown Life Ins. Co.* v. *Skinner*(2).

The Parliament at its last session declared that those judgments could be brought before this court.

I would have been inclined to think that the right of appeal should be determined by the law in force at the time of the judgment and not by the date of the action. However a contrary jurisprudence of this court exists: see *Hyde* v. *Lindsay*(3); *Williams* v. *Irvine*(4); *Mitchell* v. *Trenholme*(5); and I am bound by it.

The motion should be dismissed.

Motion dismissed with costs.

Solicitor for the appellants: *V. McNamara.*

Solicitors for the respondent: *Hearst, Rowland & Brown.*

(1) 44 Can. S.C.R. 284.
(2) 44 Can. S.C.R. 616.
(3) 29 Can. S.C.R. 99.
(4) 22 Can. S.C.R. 108.
(5) 22 Can. S.C.R. 333.