

1916

*Nov. 16.
*Dec. 11.

THE GLEN FALLS INSURANCE
COMPANY AND OTHERS } APPELLANTS;
(DEFENDANTS). }

AND

P. ADAMS (PLAINTIFF).....RESPONDENT.

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

Appeal—Amount in controversy—Joinder of defendants—Separate contracts.

A., by order of a master, was allowed to prosecute one action against three insurance companies on three separate policies and obtained from the Appellate Division judgment against each for an amount less than \$1,000 though the amounts in the aggregate exceeded that sum.

Held, following *Bennett v. Havelock Electric Light Co.* (46 Can. S.C.R. 640) that the defendants were in the same position as if a separate action had been brought against each and as none of them was made liable for a sum exceeding \$1,000 no appeal would lie to the Supreme Court of Canada.

MOTION to quash an appeal from the decision of the Appellate Division of the Supreme Court of Ontario reversing the judgment at the trial by which the plaintiff's action was dismissed.

Respondent's counsel claimed that the Court had no jurisdiction to entertain the appeal as under the circumstances, which are stated in the headnote, there was no sum exceeding \$1,000 in controversy.

W. L. Scott for the motion referred to *Bennett v. Havelock Electric Light Co.*(1); *Stephens v. Gerth*(2); *Bain v. Anderson & Co.*(3).

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

(1) 46 Can. S.C.R. 640.

(2) 24 Can. S.C.R. 716.

(3) 28 Can. S.C.R. 481.

Leighton McCarthy K.C. contra cited Robinson, Little & Co. v. Scott & Son.(1).

THE CHIEF JUSTICE.—I concur in the opinion of Mr. Justice Anglin.

EDINGTON J.—I am unable to distinguish this case from that presented in the case of *Bennett v. Havelock Electric Light Co.*(2), in relation to the right to appeal and therefore think following that decision the motion to quash must prevail with costs.

DUFF J. concurred in the judgment quashing the appeal.

ANGLIN J.—Under the judgment of the Appellate Division the plaintiff has recovered against three defendants sued in one action upon independent claims arising out of three separate contracts for amounts each individually less than \$1,000 but in the aggregate exceeding that sum. He had been allowed by order of the master in chambers, presumably in order to save expense, to proceed with this single action,

setting out the separate amounts claimed * * * as against each defendant respectively,

instead of being obliged to discontinue it and commence a separate action against each defendant upon its own contract and then have the three actions consolidated. It was stated at bar that this order was made in the exercise of power conferred by R.S.O., 1914, c. 183, s. 158, s.-s. 1. But that provision would appear not to extend to actions brought upon separate and unconnected policies—it deals with

several actions brought for the recovery of money payable under a contract of insurance.

Probably the order was made under the more com-

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(1) 38 Can. S.C.R. 490.

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prehensive terms of the Ontario Consolidated Rule 320. The plaintiff was afterwards allowed to prosecute a single appeal from the judgment at the trial to the Appellate Division, and the judgment of that court allows "the plaintiff's said appeal."

These facts, in my opinion, do not give jurisdiction to this court to entertain the proposed appeals of the defendants. The recovery against each defendant is for a sum less than \$1,000 and is upon a contract on which that defendant alone is liable. The appeal of each defendant is only against the judgment affecting it. It has no concern in the contract or liability of either of the other defendants. Though for convenience their appeals would, no doubt, be heard together, and probably upon a single appeal case, the appeal of each defendant is nevertheless a distinct and separate appeal in which the matter in controversy is its own liability and nothing else. I think the motion to quash must prevail. *Bennett v. Havelock Electric Light Co.*(1) is a decision in point. Indeed, in that case the liability of the several defendants arose out of a single transaction and it was even contended that as directors, guilty of misfeasance their liability was joint and several. Nevertheless an attempted joint appeal to this court was quashed, the judgment of the Court of Appeal (reversing, as in this case, that of the trial judge dismissing the action) having held each defendant liable only for \$1,000 and costs. If there was not jurisdiction in that case there certainly cannot be in this.

BRODEUR J.—I am unable to distinguish this case from the case of *Bennett v. Havelock Electric Light Co.*(1), which was decided by this court on the 22nd

(1) 46 Can. S.C.R. 640; Cameron's Supreme Court Practice (2 ed.) 278.

February, 1912, and which is mentioned in Cameron's Second Edition, p. 278.

In that case of *Bennett*(1) an action had been instituted against several defendants as directors of the company respondent, asking that they be condemned to pay an amount of \$4,700 being the amount of alleged secret and dishonest profits. The Divisional Court had ordered that the plaintiffs could recover against each of the defendants the sum of \$1,000.

In the present case the insurance companies, defendants, were sued by virtue of different contracts for an alleged loss of the premises insured. The companies were allowed to plead separately and the cases were tried as one case in order to reduce the cost of "enquête" under the provisions of article 158 of chap. 183 R.S.O. The amount to which each company was condemned was below \$1,000.

What we should consider in this case in order to determine the jurisdiction in question is not the aggregate amount for which the respondents were sought to be made liable, but the position is the same as if proceedings had been taken separately against each of the defendants.

I have come to the conclusion that under the provisions of section 48, sub-section (c), the matter in controversy in the appeal does not exceed for each of the defendants the sum of \$1,000, and that we have no jurisdiction.

The motion to quash should be granted.

Appeal quashed with costs.

Solicitors for the the appellants: *McCarthy, Osler,
Hoskin & Harcourt.*

Solicitors for the respondent: *McGaughey & Mc-
Gaughey.*