

J. JACK (PLAINTIFF).....APPELLANT;

1929

*May 27

*May 31

AND

J. G. CRANSTON (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE APPELATE DIVISION OF THE
SUPREME COURT OF ONTARIO

Appeal—Jurisdiction—"Amount or value of the matter in controversy in the appeal"—*Supreme Court Act, R.S.C. 1927, c. 35, s. 41, cl. (f).*

For the purposes of appeal to the Supreme Court of Canada, "the amount or value of the matter in controversy in the appeal" depends, not on what is claimed in the action, but on what may be contested in the proposed appeal (*Dreifus v. Royds*, 64 Can. S.C.R. 346). Where a plaintiff seeks to appeal against the dismissal of his action by a provincial appellate court, after he had recovered at the trial a pecuniary judgment for an amount (with allowable interest) less than \$1,000, but from which he had not cross-appealed, the Supreme Court of Canada has no jurisdiction to grant special leave to appeal under clause (f) of the proviso to s. 41 of the *Supreme Court Act*, as the utmost relief which he can possibly obtain on the appeal is the restoration of the trial judgment, in which, by not appealing against it, he has acquiesced. (*Monette v. Lefebvre*, 16 Can. S.C.R. 387, and other cases, referred to.)

MOTION by the plaintiff, under the proviso to s. 41 of the *Supreme Court Act* (R. S. C. 1927, c. 35) for special leave to appeal to this Court from the judgment of the Appellate Division of the Supreme Court of Ontario (1), special leave to appeal having been refused by the Appellate Division.

The motion was refused with costs.

J. Jack (applicant in person) for the motion.

A. W. Rogers *contra*.

The judgment of the court was delivered by

ANGLIN C. J. C.—The plaintiff moves, under the proviso to section 41 of the *Supreme Court Act* (R.S.C., 1927, c. 35), for special leave to appeal to this Court, having been refused such leave by the Appellate Divisional Court, which had dismissed the action. The only clause of the proviso which can possibly apply to this case is that which enables this Court to grant special leave, refused below,

*PRESENT:—Anglin C. J. C. and Duff, Rinfret, Lamont and Smith JJ.

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(f) In cases * * * in which the amount or value of the matter in controversy in the appeal will exceed the sum of one thousand dollars. The plaintiff's claim was for \$2,000 damages and, at the trial, he recovered judgment for \$250. On appeal by the defendant, that judgment was set aside by the Appellate Divisional Court and the action dismissed. The plaintiff did not cross-appeal to that court from the judgment at the trial.

Whatever doubt may have existed in the past as to the basis upon which the value of the matter in controversy should be determined for the purposes of appeal to this Court, since the amendment of 1920, enacting the proviso above referred to, it is beyond question that "the amount or value of the matter in controversy in the appeal" depends not on what is claimed in the action, but on what may be contested in the proposed appeal. *Dreifus v. Royds* (1). In the case of a plaintiff seeking to appeal against the dismissal of his action by a provincial appellate court, after he had recovered at the trial a pecuniary judgment for an amount (with allowable interest) less than \$1,000, but from which he had not cross appealed, the utmost relief which he can possibly obtain in this Court is the restoration of the trial judgment, in which, by not appealing against it, he has acquiesced.

It follows that the amount or value of the matter in controversy in this appeal is, at the outside, the sum of \$250, with the possible addition of some interest; in any event, an amount much less than \$1,000.

Moreover, under the proviso of s. 41 referred to, the application for special leave to appeal must be made to this Court within the sixty days from the entry or pronouncement of the judgment to be appealed from fixed by s. 64, or within thirty days thereafter. This time has long since expired. But, assuming in favour of the applicant that he has made a case for the exercise of the discretion conferred on the Court by 15-16 Geo. V., c. 27, s. 3 (R.S.C., 1927, c. 35, s. 41) to extend this period, the fact that the amount or value of the matter in controversy in the appeal is clearly less than \$1,000 is fatal to our jurisdiction to grant the present motion. The motion will, accordingly, be refused with costs. A decision directly in

(1) (1922) 64 Can. S.C.R. 346.

point is the case of *Monette v. Lefebvre* (1), which has been since approved in *Laberge v. Equitable Life Ass. Soc.* (2); *Beauchemin v. Armstrong* (3); and *Beauvais v. Genge* (4).

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Motion refused with costs.

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Solicitors for the appellant: *Ewart, Scott, Kelley & Kelley.*

Solicitor for the respondent: *Trevor H. Grout.*

*PRESENT:—Duff, Mignault, Newcombe, Lamont and Smith JJ.