
JOHN WESLEY CLARKE APPELLANT;

AND

THE ATTORNEY-GENERAL FOR
 ONTARIO, JOHN D. MILLAR and }
 DOUGLAS GLEN CREBA } RESPONDENTS.

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MOTION TO QUASH

Appeals—Motion to quash—Jurisdiction—Amount in controversy—Final judgment—Taxation of costs—Solicitor retained by third party on behalf of defendant—Action dismissed with costs—Whether defendant entitled to tax costs—Supreme Court Act, R.S.C. 1952, c. 259, ss. 36, 41.

*PRESENT: Cartwright C. J. and Martland, Hall, Spence and Pigeon JJ.

1969
 CLARKE
 v.
 ATTORNEY-
 GENERAL
 FOR ONTARIO
et al.

His action against the respondents having been dismissed at trial, the appellant was ordered to pay the costs of the respondents Millar and Creba who had been represented by counsel retained by the Crown. The taxing officer rejected the appellant's objection that because the respondents were not liable for costs they were not entitled to costs against him. The taxing officer taxed the costs at \$29,230.50. An appeal to a judge was dismissed. A further appeal to the Court of Appeal was quashed on the ground that the judgment appealed from was interlocutory and not final. An appeal *de plano* was filed in this Court by the appellant. The respondents moved to quash the appeal and the appellant applied for leave to appeal.

Held: The motion to quash should be dismissed.

Appels—Requête en annulation—Juridiction—Montant en litige—Jugement définitif—Taxation de dépens—Avocat engagé par un tiers pour représenter le défendeur—Action renvoyée avec dépens—Défendeur a-t-il droit à ses dépens—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 36, 41.

A la suite du renvoi en première instance de l'action de l'appelant contre les intimés, il a été ordonné à l'appelant de payer les dépens des intimés Millar et Creba qui avaient été représentés par un procureur engagé par la Couronne. L'appelant a soutenu devant l'officier chargé de faire la taxation que les intimés n'avaient pas droit aux dépens contre lui parce qu'eux-mêmes n'étaient pas responsables des dépens. Cette objection a été rejetée et les dépens ont été taxés à la somme de \$29,230.50. La Cour d'appel a rejeté un appel du jugement de première instance refusant de reviser la taxation pour le motif que le jugement dont appel était interjeté était un jugement interlocutoire et non définitif. L'appelant a formé un pourvoi de plein droit à cette Cour. Les intimés ont présenté une requête en annulation et l'appelant a demandé la permission d'appeler.

Arrêt: La requête en annulation doit être rejetée.

REQUÊTE en annulation d'un appel d'un jugement de la Cour d'appel de l'Ontario¹, confirmant un jugement du Juge Lieff. Requête rejetée.

MOTION to quash an appeal from a judgment of the Court of Appeal for Ontario¹, affirming a judgment of Lieff J. Motion dismissed.

P. J. Brunner, for the petitioners, respondents.

J. Sopinka, for the appellant.

At the conclusion of the argument of counsel for both parties, the following judgment was delivered:

¹ [1968] 1 O.R. 800.

THE CHIEF JUSTICE (*orally for the Court*):—We are all of opinion that the decision of the Court of Appeal that the appellant had no right of appeal to that Court without leave from the judgment of Lief J. was a decision determining a substantive right of the appellant. If that judgment stands unreversed the result is that the appellant must pay to the respondents \$29,230.50 and therefore the amount in controversy in the appeal to this Court is more than \$10,000. The motion to quash is dismissed with costs.

1969
CLARKE
v.
ATTORNEY-
GENERAL
FOR ONTARIO
et al.
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Motion to quash dismissed with costs; motion for leave to appeal withdrawn, no order as to costs.

Solicitors for the appellant: Fasken & Calvin, Toronto.

Solicitors for the respondents: Kimber, Dubin, Morphy & Brunner, Toronto.
