

GEORGE W. MORLEY (PLAINTIFF) . . . . . APPELLANT;

1949  
\*Oct. 14  
\*Oct. 15

AND

HARVEY FORSTER *et al* (DEFENDANTS). RESPONDENTS.

MOTION FOR APPROVAL OF SECURITY UNDER SECTION 70 OF  
*The Supreme Court Act*

*Function of Court under The Supreme Court Act, R.S.C., 1927, c. 35, s. 70.*

*Held:* Under section 70 of *The Supreme Court Act*, the function of the Court from whose judgment the appellant is about to appeal, or of this Court, or a judge of either Court, is to inquire as to the sufficiency of the security tendered. On such an application, an applicant should not be deprived of any right to appeal he may possess.

MOTION by appellant for leave to renew application to have security approved by Court of Appeal, to stay execution on the bill of costs of the respondents before the Court of Appeal, and for an order that the respondents pay the costs of some motions.

Further MOTION to excuse the appellant from complying with any or all of the provisions of the Rules of the Supreme Court of Canada, and, in particular, to dispense him from filing the Certificate of Security referred to in Rule 10, and to have the arguments on behalf of both parties heard on the day the Motion is heard.

*George W. Morley*, in person, for the motion.

*G. T. Walsh, K.C.*, *contra*.

The Court having heard the appellant, without calling on Walsh K.C., reserved judgment.

THE COURT:—Upon motion by the appellant on October 17th of this year for leave to appeal from a judgment of the Court of Appeal for Ontario, this Court, on the assumption that leave was necessary, refused the application. The appellant now moves to excuse him from filing the certificate of security referred to in Rule 10 of the Rules of this Court and for leave to renew his application to have the security approved by the Court of Appeal for

\* PRESENT: Kerwin, Taschereau, Rand, Estey and Locke JJ.

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Ontario or a judge thereof, or for approval of the security by this Court. We have no power so to order and the applications must be dismissed with costs.

The appellant insists that the amount or value of the matter in controversy in the appeal exceeds two thousand dollars. Even if we had jurisdiction, it would be impossible on the material before us to make a pronouncement upon that question. It was pointed out that the appellant applied some time ago to a judge of the Court of Appeal for Ontario for approval of security and that that application was refused because, as it is stated in the formal order, "it appearing that leave to appeal is necessary". We are now told that the circumstances were not made clear to the learned judge who heard the application. In any event, under section 70 of the *Supreme Court Act*, the function of the Court from whose judgment the appellant is about to appeal, or of this Court, or a judge of either Court, on such an application is to inquire as to the sufficiency of the security tendered. In view of the appellant's contention that the necessary amount is in controversy in the appeal, he may yet be able to find means to bring the matter before the Court of Appeal for Ontario or a judge thereof with the view of the granting of an application for approval of the security tendered by him.

While we have already refused leave to appeal, if the appellant is entitled as of right to appeal, he should not be deprived of that right on a motion to approve the security. If security is approved, it is still open to the respondents to move to quash for lack of jurisdiction.

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