

LARRY McNEA AND VIVIAN McNEA . . APPLICANTS;

1955  
\*Oct. 24  
\*Nov. 15

AND

THE CORPORATION OF THE TOWN-  
SHIP OF SALTFLEET AND OTHERS } RESPONDENTS.MOTION FOR LEAVE TO APPEAL AND MOTION TO QUASH FOR  
WANT OF JURISDICTION*Appeal—leave—Amount in controversy—The Supreme Court Act,  
R.S.C. 1927, c. 35, s. 36.*

Whether the amount or value of the matter in controversy in an appeal exceeds \$2,000 within the meaning of s. 36 of the *Supreme Court Act* is very often shown sufficiently in the allegations of fact in the statement of claim and in the amount claimed. In the circumstances of the present case, where the trial judge, had he considered the plaintiff entitled to succeed, would have fixed the damages at \$500, the extravagant amounts inserted in the statement of claim are no criterion of such amount or value. It was not a case where leave to appeal should be granted.

MOTION by the applicants for leave to appeal to this Court from the judgment of the Court of Appeal for Ontario and MOTION to quash for want of jurisdiction made by the respondents.

*C. Dubin, Q.C.* for the applicants.

*G. F. Henderson, Q.C.* for the respondents.

THE COURT:—This is not a case where leave to appeal should be granted.

However, at the suggestion of the Court and with the consent of Counsel, the matter was treated as if the appellant had given notice of appeal *de plano* and the respondent had moved to quash. Very often the allegations of fact set forth in a statement of claim and the amount claimed may be sufficient to show that the amount or value of the matter in controversy in an appeal exceeds \$2,000 within the meaning of s. 36 of The Supreme Court Act. This has been

\*PRESENT: Kerwin C.J., Taschereau, Rand, Kellock, Estey, Locke and Abbott JJ.

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adopted by the Court as a general rule and is exemplified in *Beaver Dam v. Stone* (1). Although there are exceptions as appears from the decision in *Kinkel v. Hyman* (2), it cannot be said, in the circumstances of the present case as they were explained, that the amount of damages asked for in the statement of claim is any indication that the amount or value of the matter in controversy exceeds the stated sum.

It appears that the plaintiffs purchased three acres of vacant land in the Township of Saltfleet and moved on it a building for which they had paid \$75. They were using this building partly as a residence, but also for storing scrap metal, etc., the male plaintiff being a junk dealer. Upon complaint being made by neighbours, it was found by officials of the municipality that in many respects the building contravened the provisions of the Township Building By-law. The endeavours of the officials to co-operate with the plaintiffs by suggesting modifications of the building were unsuccessful, due to the attitude of the plaintiffs. Thereupon the Council instructed the Building Inspector and Chief of Police to carry out the provisions of s. 16 of the By-law and a notice was accordingly given, failure to comply with which was followed by the building being torn down. If the trial judge had considered that the plaintiffs were entitled to succeed, he would have fixed the total damages at \$500. Under these circumstances the extravagant amounts inserted in the statement of claim are no criterion of the amount or value of the matter in controversy.

The motion to quash is granted and the application for leave to appeal is dismissed. There will be costs only as of one motion.

*Leave to appeal refused.*

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(1) [1932] S.C.R. 405.

(2) [1939] S.C.R. 364.