

1961  
 \*Feb. 14  
 Feb. 21

ALICE VOGHELL (*Defendant*) ..... APPLICANT;

AND

PAUL VOGHELL (*Plaintiff*) ..... RESPONDENT.

MOTION FOR LEAVE TO APPEAL

*Appeals—Custody of children—Leave to appeal—Territorial Court of the Northwest Territories.*

In his action, commenced at Yellowknife, Northwest Territories, the plaintiff claimed the custody of the three children issue of his marriage with the defendant, and claimed also damages for criminal conversation from her co-defendant. Although the female defendant in her counterclaim had asked only for the custody of the children, the trial judge, considering that her evidence made it obvious that she wanted a divorce, directed that the counterclaim be amended so as to include a prayer for dissolution of the marriage. He then dissolved the marriage, granted custody of the children to the defendant and dismissed the claim for damages against the male defendant. The Court of Appeal for the Northwest Territories reversed in part this judgment, set aside the granting of the divorce and granted custody of the children to the plaintiff.

The defendant applied for leave to appeal to this Court with respect only to the custody of the children.

MOTION for leave to appeal from a judgment of the Court of Appeal for the Northwest Territories, reversing in part a judgment of Sissons J. of the Territorial Court.

*W. G. Morrow, Q.C.*, for the defendant, applicant.

*A. M. Dechene, Q.C.*, for the plaintiff, respondent.

The judgment of the Court was delivered by

THE CHIEF JUSTICE:—Mr. Morrow made it clear in his presentation that he was not arguing that leave to appeal should be granted on the ground that the Territorial Court of the Northwest Territories had jurisdiction to enter a decree of divorce, but only on the question as to the custody of the children. The motion for leave to appeal is dismissed without costs.

*Leave refused without costs.*

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\*PRESENT: Kerwin C.J. and Martland and Ritchie JJ.