Supreme Court of Canada
Hartin et al. v. May et al., [1944] S.C.R. 278
Date: 1944-06-22

Hartin et al. *(Appellants)* v. May et al. *(Respondents).*

1944: May 22; 1944: June 22;

Present: Rinfret C.J. And Kerwin, Hudson, Taschereau And Rand JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Appeal—Jurisdiction—"Final judgment" (Supreme Court Act, R.S.C. 1927, c. 35, s. 2 (b)).

An action was dismissed by the trial Judge on the sole ground of *res judicata,* other matters sought to be litigated not being considered. On appeal it was held that the plea of *res judicata* failed, the judgment of the trial Judge should be set aside, and the case should proceed to be tried on its merits. The defendant appealed to this Court; and a motion was made to quash the appeal for want of jurisdiction because, so it was contended, the judgment appealed from was not a final judgment.

Held: This Court had jurisdiction to hear the appeal; the judgment appealed from was a "final judgment" as defined in the *Supreme Court Act* (R.S.C. 1927, c. 35, s. 2 (b)).

[Page 279]

MOTION to quash appeal for want of jurisdiction.

Mrs. M. M. May in person for the motion.

P. D. Murphy contra.

THE COURT.—In this case the respondents issued a writ against the appellant both personally and in his quality as trustee of the Daybreak Mining Company Limited in bankruptcy.

Several defences were raised against the action but the learned trial judge, without considering the other matters sought to be litigated, dismissed the action upon the ground

that the matter in issue between the parties had already been decided by the courts, that there was res *judicata* and that hence the plaintiffs were without remedy.

The plaintiffs appealed from this decision and as a result the judgment was set aside by the Court of Appeal where, by a majority of two judges against one, it was decided that the plea of *res judicata* failed and that the action should proceed to trial and the case should be tried on its merits.

From that judgment the defendants have now appealed to this Court as of right and they are met by the respondents' motion to the effect that the appeal is not competent because the judgment appealed from is not final but only interlocutory.

It should be stated that upon settlement of the minutes the learned judges of the Court of Appeal who rendered the majority judgment, delivered additional notes stating that when giving judgment the question of a new trial was not in their minds at all and that all the Court dealt with and intended to deal with was whether or not the trial judge was right in giving effect to one particular defence as a ground for dismissing the action.

Under the circumstances we are of the opinion that this Court holds jurisdiction to hear the appeal.

"Final judgment" is defined in the interpretation section of the Act respecting this Court. It means "any judgment, rule, order or decision which determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding."

[Page 280]

We think the judgment appealed from comes within that definition. So far as the issue of *res judicata* is concerned, the right of the parties is finally determined and will remain so unless the appellant succeeds in his present appeal.

The motion to quash should be dismissed with costs.

Motion dismissed with costs.