LEO FLEMING (*Defendant*) .....APPELLANT;

AND

FLOYD ATKINSON (*Plaintiff*) .....RESPONDENT.

1956
*Nov. 12
*Nov. 14

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Supreme Court—Jurisdiction—Amount or value of matter in controversy in appeal—The Supreme Court Act, R.S.C. 1952, c. 259, s. 36(a), as re-enacted by 1956, c. 48, s. 2.

The 1956 re-enactment of s. 36(*a*) of the *Supreme Court Act*, increasing to $10,000 the amount that must be in controversy to give a right of appeal without leave, does not apply to a case in which the action was pending when the amendment came into force on August 14, 1956, even though the judgment directly appealed from was not pronounced until after that date. *Hyde v. Lindsay* (1898), 29 S.C.R. 99, applied.

APPLICATION for leave to appeal from the judgment of the Court of Appeal for Ontario (1), varying a judgment of Moorhouse J. at trial (2).

C. F. MacMillan, for the defendant, appellant, applicant.

K. A. Murchison, for the plaintiff, respondent, *contra.*

The application was dismissed at the close of the argument. The reasons of the Court were subsequently delivered by

THE CHIEF JUSTICE:—This motion by the defendant for leave to appeal from a judgment of the Court of Appeal for Ontario (1) was dismissed at the hearing on the ground that the defendant was entitled to appeal as of right. On May 9, 1955, the plaintiff secured judgment against the defendant in the Supreme Court of Ontario in the sum of $5,608.40 and costs and a counterclaim was dismissed (2). On June 19, 1956, the Court of Appeal dismissed an appeal by the defendant in so far as the claim of the plaintiff was

*PRESENT: Kerwin C.J. and Cartwright and Nolan JJ.

(1) [1956] O.R. 801, 5 D.L.R. (2d) 309.

(2) [1955] O.R. 565, [1955] 4 D.L.R. 408.

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concerned, but allowed the counterclaim to the extent of $220, together with the costs of that counterclaim. The defendant was ordered to pay the plaintiff his costs of the action and of the appeal.

On August 14, 1956, an amendment to the *Supreme Court Act* was assented to (1) whereby an appeal to this Court lies from a final judgment pronounced in a judicial proceeding where the amount or value of the matter in controversy in the appeal exceeds $10,000, instead of $2,000 as formerly. It is clear that, as the judgment of the Court of Appeal was given before the coming into force of the amendment, the defendant's right to appeal has not been lost; but, as this is the first case in which the question has arisen, it should also be pointed out that the amendment does not apply to a case in which the action was pending when the amendment came into force, even though the judgment directly appealed from was not pronounced until afterwards: *Hyde v. Lindsay* (2).

Under the circumstances the costs of the motion were given to the respondent in the cause.

Motion dismissed.

Solicitors for the plaintiff, respondent: Pringle & Pringle, Belleville.

Solicitors for the defendant, appellant: Richardson & MacMillan, Toronto.

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(1) 1956 (Can.), c. 48, s. 2, repealing and re-enacting R.S.C. 1952, c. 259, s. 36(*a*).

(2) (1898), 29 S.C.R. 99.