

CASES
DETERMINED BY THE
SUPREME COURT OF CANADA
ON APPEAL

FROM
DOMINION AND PROVINCIAL COURTS

A. E. HAMILTON, (DEFENDANT) APPELLANT;

1922
*Oct. 10.

AND

G. H. EVANS AND OTHERS, (PLAINTIFFS) . . . RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Appeal—Jurisdiction—Amount in controversy—Addition of interest to amount of judgment—“Supreme Court Act”, 10-11 Geo. V., c. 32, s. 40.

Under the provisions of section 40 of the “Supreme Court Act”, as enacted by 10-11 Geo. V., c. 32, interest from the date of the judgment of the trial court to the date of the judgment of the appellate court cannot be added to the amount of the judgment of the trial court, in order to bring the “matter in controversy” up to an amount exceeding two thousand dollars.

MOTION by way of appeal from an order of the registrar dismissing appellant’s motion to affirm the jurisdiction of this court.

The appellant moved by way of appeal from an order of the registrar dismissing his motion to affirm the jurisdiction of the court. The action was begun after the 1st July, 1920. By the judgment pronounced at the trial, the plaintiff recovered \$1,974.57, including interest to the date of the judgment. An appeal to the Court of Appeal was

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

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dismissed. Special leave to appeal was not asked for, and the defendant gave notice of appeal to this court. The question was as to the construction of sec. 40 of the "Supreme Court Act," as enacted by 10-11 Geo. V., c. 32, which reads as follows:

Where the right to appeal or to apply for special leave to appeal is dependent on the amount or value of the matter in controversy, such amount or value may be proved by affidavit, and it shall not include interest subsequent to the date on which the judgment to be appealed from was pronounced or any costs.

By sec. 39, it is provided that:

Except as otherwise provided by sections thirty-seven and forty-three, notwithstanding anything in this Act contained, no appeal shall lie to the Supreme Court from a judgment rendered in any provincial court in any proceeding unless,

(a) the amount or value of the matter in controversy in the appeal exceeds the sum of two thousand dollars; or,

(b) special leave to appeal is obtained as hereinafter provided.

Geo. F. Macdonnell, for the appellant, contended that "the judgment to be appealed from" is the judgment of the Court of Appeal, and that interest at the statutory rate from the date of the judgment at the trial to the date of the judgment of the Court of Appeal should, therefore, be added to the \$1,974.57 awarded by the first mentioned judgment, which would bring "the matter in controversy" up to an amount exceeding the two thousand dollars.

Clarke, for the respondent, argued that, since the judgment of the trial court had been affirmed on appeal, it was the judgment to be "appealed from" within the meaning of section 40, in which Parliament meant to embody the effect of the decisions of the court in *Toronto Railway Co. v. Milligan* (1), and like cases. "The matter is controversy in the appeal" (s. 39, former s. 48c), was that of which recovery had been awarded by judgment at the trial and did not include interest subsequently accrued.

By THE COURT:

We agree with the position taken by counsel for the respondent. The motion will be dismissed with costs.

Motion dismissed with costs.