Conds v. Kabota

[1925] B.C.J. No. 69

35 B.C.R. 506

British Columbia Supreme Court
Vancouver, British Columbia

McDonald J.
(In Chambers)

Heard: May 1, 1925.
Judgment: May 4, 1925.

Counsel:

Bray, for the application.
Craig K.C., contra.

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1 **McDONALD J.**:-- The plaintiff brought an action in the County Court of Vancouver claiming unstated damages for wrongful dismissal. The learned judge, as appears by the record of proceedings, dismissed the action, and it is common ground that his reason for doing so was that he had no jurisdiction. The plaintiff now moves for a mandamus to compel the learned judge to hear the case. The answer briefly is, that the case has been heard and the action dismissed.

2 Inasmuch as nothing appeared on the face of the proceedings to shew that there was jurisdiction in the County Court, it would appear that the learned judge, at least in so far as the authorities in British Columbia go, was right in the decision reached: see In re Nowell and Carlson (1919), 26 B.C.R. 459; Camosun Commercial Co. v. Garetson & Bloster (1914), 20 B.C.R. 448.

3 But even if the learned judge were wrong, it would still appear that, he having finally disposed of the case by dismissing the action, mandamus does not lie. Without considering the older cases this seems clearly to be the result of the following decisions: The Queen v. Justices of Middlesex (1877), 2 Q.B.D. 516; In re Burns v. Butterfield (1854), 12 U.C.Q.B. 140 and Williamson v. Bryans (1862), 12 U.C.C.P. 275. [35 BCR Page507]

4 In my opinion, therefore, notwithstanding Mr. Bray's strenuous argument to the effect that under the statute it was the duty of the learned judge to strike out the case rather than to dismiss the action, still there is no power in this Court to grant the application.

Application dismissed.