Davis v. Yoshida

[1931] B.C.J. No. 13

[1931] 3 W.W.R. 703

British Columbia Supreme Court
Vancouver, British Columbia

Macdonald J.
(In Chambers)

Heard: September 22, 1931.
Judgment: November 23, 1931.

Counsel:

Donnenworth, for the plaintiff.
Levin, for the defendant.

---

1 **MACDONALD J.**:-- Plaintiff appeals herein against the decision of the stipendiary magistrate, of the Small Debts Court of the County of Vancouver, dismissing an application for the appointment of a receiver, by way of equitable execution. The oral and extensive written arguments of counsel for the appellant and respondent indicate that they are desirous of obtaining a judgment of this Court, as to whether the said stipendiary magistrate had jurisdiction to appoint such a receiver, he having decided to the contrary.

2 The amount of the judgment, sought to be implemented by the receivership, with costs, amounts to $28.50. This amount is altogether disproportionate to the research and able arguments of counsel. There is no provision in the Small Debts Courts Act (R.S.B.C. 1924, Cap. 51) by which a "case" can be stated, for the consideration of this Court. It would appear, however, that this is, practically, the course which is sought to be adopted by [45 BCR Page86] the plaintiff and acceded to by the respondent. At any rate no contention was made by counsel for the respondent that I should not consider and render a judgment upon such decision, as to the practice to be followed in a Small Debts Court. If I were to do so, I would be conceding that the appeal had been properly launched for that purpose. To my mind, it is immaterial whether the magistrate refused to appoint a receiver, through a belief that he had no jurisdiction to do so, or in the exercise of his discretion, on the ground that there was some other and less expensive remedy open to the plaintiff for recovery of the judgment debt. The reason why I consider it immaterial is, because I do not think there is any appeal open to the plaintiff in the matter. In considering the right to appeal I am dealing with the jurisdiction of the Court and so should act, even if the question has not been raised by counsel, Fletcher

Moulton, L.J. in Kydd v. Liverpool Watch Committee (1907), 2 K.B. 591 at p. 606, in this connection, and referring to the jurisdiction of the Court, said:

> It is clear that it is an objection which the Court itself would be entitled, and indeed bound, to take.

3 Then in the same case upon appeal to the House of Lords (1908), A.C. 327 at p. 330 Lord Loreburn, L.C., in considering a matter of jurisdiction of far more importance than the one here presented, said as follows:

> My Lords, in this case the question is whether or not a Court of law has jurisdiction to entertain a special case, stated by quarter sessions, in regard to a point decided by quarter sessions under the Police Act, 1890, s. 11.
>
> The King's Bench Division held that they had no such jurisdiction. On appeal, two members of the Court of Appeal expressed their personal concurrence in that view, but held that they ought to follow the example of your Lordships' House in the cases of Upperton v. Ridley (1903), A.C. 281 in 1903 and Garbutt v. Durham Joint Committee (1906), A.C. 291 in 1900. Accordingly the Court of Appeal reversal the judgment of the King's Bench and held there was jurisdiction.
>
> Now it is beyond doubt that this House did set the example which was followed in the present case. The cases to which I have referred were special cases stated in regard to the very section in question, and this House, as well as the Courts below, entertained and decided them as though there were full jurisdiction. The explanation is that no question of the kind was raised at any stage by either party, and it does not seem to have occurred to any of the judges who heard these cases either in this House or in the Courts below that a proceeding so familiar as that of a case stated by quarter sessions was open to such an objection. Your Lordships, no [45 BCR Page87] doubt, are bound by that which has been determined in this House. No such point as is now raised has ever been determined here. It was indeed argued by the appellant that, on the contrary, the decision in Westminster Corporation v. Gordon Hotels [(1908), A.C.] 142 was is precedent in their favour. I do not think so. That decision related to a different Court, a different Act, and a different subject-matter. I think the point before us, is an open point.
>
> The learning and the law laid down as to other Acts of Parliament do not conclude the present case. We must look at the Act itself, subject-matter and language together, in order to find whether or not the Court of quarter sessions can pass on to the Courts of law, by asking advice or by inviting decision, these particular duties. In my opinion it cannot pass on these duties. ...

4 In Von Stentz v. Comyn (1849), 12 Ir. Eq. R. 622 at p. 629 the Lord Chancellor of Ireland said:

> I am not aware of any general principle that by the constitution of England it is essentially the birthright of the subject to have the advantage of an appeal.

5 This is of moment, when it is considered, that the subject-matter which was being dealt with in that case, involved the validity of a will.

6 It seems to me apparent that the sections of the Small Debts Court Act, allowing an appeal, are not intended to apply to mere matters of practice or procedure in that Court, but to "decisions" which are final in their effect, such as a judgment recovered by a plaintiff or a claim dismissed, operating in favour of a defendant.

7 Subsection (1) of section 47 of the Act says:.

> An appeal from the decision of a magistrate shall lie in all cases, both as to law and fact.

8 There is no specific definition of what constitutes a "decision" but read in conjunction with the context, as to appeals, I think it has the meaning I have mentioned. It is referred to in subsection (2) of section 10 of the Act and there, has the force of a judgment in open Court on the days fixed for trial of the cause. Subsection (2) of said section 47 provides that if the appellant be the plaintiff he shall give security, in a sum not exceeding $50 and, if defendant, in a sum equal to the amount claimed, together with a sum not exceeding $50 for costs. Then a portion of section 50 seems to clearly indicate that the appeal allowed by the Act, applies only, to claims sought to be recovered in the Small Debts Court. It states that the Appellate Court shall [45 BCR Page88]"remit the case back to the Small Debts Court, with instructions to enter the proper judgment."

9 The jurisdiction of this Court in such an appeal is thus limited. It can only adopt the course outlined by the legislation. There is no power to order or direct the magistrate to appoint a receiver. It would in that event be in effect a mandatory order which is not contemplated by the Act.

10 In coming to a conclusion that an appeal does not lie to this Court upon a matter of practice, in the Small Debts Court, I am bearing in mind the nature of and jurisdiction of such Court. If an appeal in matters of practice and procedure had been deemed advisable, then the legislation to that effect should have been clearly stated.

11 In this respect I quote the language of Lord Halsbury, L.C. in Ex parte County Council of Kent and Council of Dover (1891), 1 Q.B. 725 at p. 728 as follows:

> ... if those who framed the Act of Parliament had intended that an appeal should lie, they would have either given it by express words, or taken care to use language, the importance of which had been pointed out ten years before by the decision of the House of Lords in the case to which we have referred. But the Legislature, has not done so.

12 With respect to costs, if this had been a proper appeal, to be considered, I would have discretion as to awarding costs. As the question, whether the "decision" upon a matter of practice is appealable, was not raised by the respondent, I think the proper order should be that there will be no costs to either party. The appeal is therefore so dismissed.

Appeal dismissed.