

FITZPATRICK, C.J.:—This is an action to quash for want of jurisdiction. In this case an action was brought on a document claimed to be a promissory note for \$3,000. After the statement of claim had been amended a stated case was prepared by the parties which, after reciting the document, asked the opinion of the court as to whether it was a promissory note, and if the court should decide that the document was not a promissory note the plaintiff should have leave to amend, whereas if the court should hold that the document was a promissory note the defendant should have the right to set up any defence he desired. The stated case was heard by Metcalfe, J., who held that the document in question was not a promissory note. Appeal was taken to the Court of Appeal, where the judgment below was reversed, the court holding that the document was a promissory note. The defendant now appeals to the Supreme Court and the respondent moves to quash on the ground that the judgment is not a final judgment.

In my opinion, the judgment below finally disposes of an important element of the defendant's defence, and with respect to which he is without remedy if the appeal here is refused.

Motion dismissed with costs.

DAVIES, J.:—I concur with Anglin, J.

ANGLIN, J.:—The respondent moves to quash this appeal on the ground that the judgment appealed against is not final. That judgment disposed of a preliminary issue of law submitted upon a stated case. It determined that the document sued upon was a promissory note. It follows, should the judgment stand, that rights peculiar to a promissory note as distinguished from an agreement to pay money not of that character have been finally accorded to the plaintiff, and the defendant has been deprived of defences which he might have had to a mere promise to pay money not in the form of a negotiable instrument. Such rights I cannot but regard as substantive rights within the meaning of the definition of final judgment adopted by parliament in 1913.

The motion, in my opinion, fails and should be dismissed with costs.

BRODEUR, J.:—This is a motion to quash for want of jurisdiction.

CAN.

S. C.

LECOMTE

v.

O'GRADY.

Fitzpatrick, C.J.

Davies, C.J.

Anglin, J.

Brodeur, J.