

Dec. 1, 1882.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

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NOTES OF CANADIAN CASES.PUBLISHED IN ADVANCE BY ORDER OF THE LAW
SOCIETY.**SUPREME COURT OF CANADA.**

FORRISTAL ET AL V. McDONALD.

*Supreme and Exchequer Court Act, sec. 31—
Supreme and Exchequer Court Amendment
Act, 1879, sec. 14—The Judicature Act of
Ontario, sec. 43—Motion for leave to appeal to
Supreme Court refused by Court of Appeal for
Ontario—Subsequent motion to Supreme Court
for leave to give proper security in Supreme
Court, granted.*

On the 15th day of September, 1882, an appeal to the Court of Appeal for Ontario, in which the present appellants (defendants) were appellants, and the present respondent (plaintiff) was respondent, was dismissed. The matter in controversy in the action amounted to the sum of \$576.30 exclusive of costs. The present appellants, on said 15th day of September, applied to the Court of Appeal in virtue of sect. 43 of the Judicature Act of Ontario for special leave to appeal from the judgment of said Court of Appeal to the Supreme Court of Canada, and the Court of Appeal refused to grant such special leave. The appellants thereupon made an application to Mr. Justice Fournier, in Chambers, for leave to appeal from said judgment of the Court of Appeal in virtue of the same sect. 43 of the Judicature Act for Ontario, or for an order that appellants be at liberty to give proper security to the satisfaction of the Supreme Court, or a judge thereof, that they will effectually prosecute their appeal, or such further or other order as the judge or Court might direct. This application was made on the 4th day of October, 1882, being within thirty days after the said judgment was pronounced. Mr. Justice Fournier, on finding that the question as to whether the section in question of the Judicature Act of Ontario was *ultra vires* of the Legislature of the Province of Ontario had been raised by the application, referred it to the full Court, and on the 7th of November the motion was argued before the full Court.

Gormully, for the appellants.

Maclean, for respondent.

In the course of the argument the Court ex-

pressed great doubt as to the constitutionality of the Ontario statute, but as the appellants' counsel abandoned the first alternative of his motion the Court made the following order:—

"Upon motion this day made unto this Court by Mr. Gormully, of counsel for the appellants, for an order for leave to appeal to this Court from the judgment of the Court of Appeal for Ontario, pronounced in this cause on the 15th day of September, 1882, or for an order that the appellants be at liberty to give proper security to the satisfaction of this Court, or a judge thereof, that they will effectually prosecute their appeal, and pay such costs and damages as may be awarded in case the judgment appealed from be affirmed, or for such further or other order as to this Court may seem meet, upon hearing read the affidavit of George Christie Gibbons, filed in support of the said motion, and upon hearing what was alleged by counsel for the said appellants, and also by counsel for the said respondent, and it appearing that this application was originally made to the Hon. Mr. Justice Fournier, in Chambers, on the 4th day of October, 1882, within thirty days after the said judgment was pronounced, and was, by the said Mr. Justice Fournier, referred to this Court, and counsel for the said appellant abandoning the first alternative of the said motion, this Court, exercising the powers conferred by the 14th section of the Supreme and Exchequer Court Act, 1875, as amended by the 14th section of the Supreme Court Amendment Act of 1879, doth order that the second alternative of the said motion be granted, and that the said appellants be at liberty to give the security required by the statute in such case made and provided, that they will effectually prosecute their appeal, and pay such costs and damages as may be awarded in case the judgment appealed from be affirmed by forthwith paying the sum of five hundred dollars (\$500) into this Court to the credit of the Registrar thereof, to abide the event of this appeal."

BANK OF BRITISH NORTH AMERICA v.
WALKER.

Motion for leave to file a printed case not certified by clerk of Court below—Extension of time to complete and file case granted.

This was a motion for an order granting leave