

brought in contravention of the Mortgagors and Purchasers Relief Act, 1915, 5 Geo. V. ch. 22, and the amending Act, 6 Geo. V. ch. 27: ante 139; but, upon an appeal against that order, it was set aside: ante 239.

The defendants now applied, to the Court in which that appeal was brought, to add to its order discharging the order dismissing the action, an order that judgment be entered in the action in favour of the plaintiff.

The application was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

W. E. Raney, K.C., for the defendants.

A. W. Langmuir, for the plaintiff.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the reason of this peculiar application was, that the defendants desired to appeal to the Supreme Court of Canada against the judgment of this Court directing that the order dismissing the action be set aside, and they feared that they might not have a right to do so unless the action was also determined against them; and that they were willing should be done, as they had no defence, upon the merits, to it.

On two grounds at least, it seemed to the learned Chief Justice that the application should not be granted, assuming that the Court had power to grant it without the consent of the plaintiff: (1) Because it seemed to be unnecessary; for, if the defendants had the right to have the action dismissed as it was, and this Court had wrongfully deprived them of that right, why should there not be a right of appeal, even without the aid of the legislation of 1913 (see the Dominion Act to Amend the Supreme Court Act, 3 & 4 Geo. V. ch. 51, sec. 1), extending the right of appeal. And (2), however that might be, the Court ought not thus to give to the defendants the conduct of the plaintiff's case against his will.

The application should be refused, so long as it is opposed by the plaintiff.