

the defendants relied both in this and in the former trial (11 O. W. R. at p. 830) affords no ground of defence.

It is not necessary for me to consider the question of estoppel, but, if it were, I should find that the defendants were by their conduct in assuming the whole burden of the defence in *Jones v. Morton Co. Limited* estopped from disputing their liability as limited by the Court of Appeal, or as now determined.

There will be judgment for the plaintiffs for \$1,983.87, with interest from the 11th December, 1907, as found by my brother MacMahon (11 O. W. R. at p. 832). I consider that the plaintiffs are entitled to their costs of both this and the former trial.

RIDDELL, J., IN CHAMBERS.

NOVEMBER 23RD, 1909.

RYCKMAN v. RANDOLPH.

Leave to Appeal—Order of Judge in Chambers—Con. Rule 1278 (777)—Conflicting Decisions in England—Reason to Doubt Correctness of Decision.

Application by the plaintiff under Con. Rule 1278 (777) for leave to appeal from the order of CLUTE, J., ante 171, dismissing an appeal from the order of the Master in Chambers, ante 150, setting aside the service of the writ of summons on the defendants E. & C. Randolph, of New York, by serving John J. Dixon at Toronto.

C. S. MacInnes, K.C., for the plaintiff.

W. E. Middleton, K.C., for the defendants Randolph.

Strachan Johnston, for Dixon.

RIDDELL, J.:—I have in *Robinson v. Mills*, 19 O. L. R. 162, considered the conditions under which such leave should be granted.

It is admitted that there are no conflicting decisions by Judges of the High Court for Ontario; but it is said that there are conflicting decisions by the Judges of the High Court in England. I do not think that that is sufficient; it is quite plain that the High Court referred to is the High Court of Justice for Ontario. Consequently the provisions of (3) (a) of the Con. Rule do not apply.

If leave is to be granted it must be under 3 (6), i.e.: (1) there must appear to me to be good reason to doubt the correctness of