

effect of the judgment was to entitle the plaintiff to interest; but on the 30th January, 1901, this motion was dismissed, the order reciting that the Supreme Court of Canada was functus officio and without jurisdiction.

The matter was not again mentioned to the Chief Justice, but had remained in statu quo for 17 years; the motion was now renewed before a Judge of the High Court Division; the Chief Justice had become functus, not having delivered judgment within six weeks after his transfer to the Court of Appeal.

The learned Judge said that the delay might well be treated as an abandonment of the claim for interest; but, apart from that, the plaintiff had no right to interest. The Supreme Court of Canada might have framed its judgment so as to give interest from the date of the trial, for it had power to pronounce the judgment which, in its view, the trial Judge ought to have given; but it did not do so; and it must be regarded as conclusively determined that the judgment of that Court as issued was what was meant.

The claim to interest was based upon certain clauses of the Judicature Act, found as secs. 35 (4), 60, 61 of the present Act, R.S.O. 1914 ch. 56.

The answers of the jury to questions of fact propounded by the trial Judge are not a verdict. The plaintiff's first recovery was in the Supreme Court of Canada.

The action of the judgment clerk in adding interest was contrary to the certificate before him of the judgment of the Supreme Court of Canada.

Reference to *Borthwick v. Elderslie Steamship Co.*, [1905] 2 K.B. 516; *McLaren v. Canada Central R.W. Co.* (1884) 10 P.R. 328.

An order should now be made directing that the minutes as settled be varied so as to reduce the recovery to \$1,500 as of the date of the minutes.

No costs.

SUTHERLAND, J., IN CHAMBERS.

MAY 1ST, 1918.

BAILEY COBALT MINES LIMITED v. BENSON.

*Appeal—Leave to Appeal from Order of Judge in Chambers—
Security for Costs—Conflicting Decisions—Important Questions
Involved—Rule 507.*

Motion by the defendants the Profit Sharing Construction Company, under Rule 507, for leave to appeal from an order of