

A plaintiff, therefore, suing as administrator, and producing letters of administration at the trial, is justified in refusing to submit to any inquiry as to his right to appear in the character, and must, in my opinion, be treated as being the person who was entitled to obtain them at the time the action was begun.

In the present case there is, however, the further circumstance that the Judge of the proper Surrogate Court had on the day the writ was issued ordered that letters of administration should be issued to the plaintiff.

This was a judicial act and is to be treated as taking precedence in point of time over the issue of the writ, which was not a judicial act: *Converse v. Michie*, 16 C. P. 167; *Clark v. Bradlaugh*, 8 Q. B. D. 62.

It was contended by plaintiff, upon the authority of *Eldon v. Keddell*, 8 East 187, *Edwards v. Reg.*, 9 Ex. 631, and *Ramsbottom v. Buckhurst*, 2 M. & S. 567, that the grant of letters of administration should be held to date from the order of the Judge, and that the order, being a judicial act, must be taken to have been made before the writ issued. I think a difficulty exists to our so holding because of the fact that, by Surrogate Court Rule No. 25, a caveat entered after the order, and before the actual issue of the letters of administration, would prevent their being issued. I think, however, that the existence of an order for their issue before the commencement of the action was at all events such a declaration of his right to obtain them as would make them when issued relate back to the date of the order.

I am of opinion, for these reasons, that the judgment dismissing the action should be set aside with costs of the present motion, and that judgment should be entered for the plaintiff with the costs of the action.

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MACLAREN, J.A.

NOVEMBER 1ST, 1904.

C.A.—CHAMBERS.

HAMILTON v. MUTUAL RESERVE LIFE INS. CO.

*Appeal to Supreme Court of Canada—Leave to Appeal after Time Expired—Special Circumstances.*

Motion by defendants, under sec. 42 of the Supreme and Exchequer Courts Act, for allowance of an appeal to the Supreme Court of Canada from the judgment of this Court