

MODE OF ENFORCING JUDGMENTS OF THE COURTS OF APPEAL.

the power to dispose of the cause as it pleases, within the rules of judicial discretion, and which can modify or amend the proceedings as they may think right, and can direct the Court below to proceed as may be ordered, should require to have their decree and judgments made proceedings in the cause in the Court below. They are so by mandate of a superior authority, *and they do not require the adoption of the Court below* before they can be acted upon; and proceedings in appeal are by statute a step in the cause."

In *St. John v. Rykert*, 3 C. L. T. 121, Patterson, J. A., said: "I am not aware of any reason or necessity for making the certificate an order of the Court of Chancery, or that that proceeding is attended with any particular effect. I understand the decision to be a judgment in the cause, which should be acted on in the same way, and by the same machinery, as an order made on rehearing in the Court of Chancery itself. The certificate is not from this Court to the Court below; it is from the Registrar of this Court to the officer of the Court below, who is to act upon it in the exercise of his ordinary ministerial functions."

It is strange that so simple a question could not have been settled without so many contradictory opinions. According to our note of the decision of the Court of Appeal in *Lowson v. Canada Insurance Co.* *ante*, p. 293, that Court has determined that "the proper way of enforcing the judgment of the Court of Appeal is to have the judgment of the Court below amended if necessary according to the judgment in appeal, and when amended to issue process thereon."

Now, as we have already intimated, we do not think this is a very satisfactory conclusion, because it seems to contemplate the necessity of a physical alteration of the judgment of the Court below, against making which there are some very obvious objections. In the first place, the statute does not require it; and, secondly, the judgment of the Court of Appeal not being final, it might lead to serious

difficulties in practice. The same practice to be pursued in regard to certificates of the Court of Appeal, is also prescribed by the Supreme Court Act with regard to certificates of the Supreme Court. Let us suppose a case where the action is dismissed in the High Court, and upon appeal the judgment is reversed, and relief granted. Now, a judgment of dismissal is a very short affair comprised in about two folios, but a judgment granting relief, may extend to some ten or twelve or more folios. If the judgment entered in the judgment book is to be struck out and the judgment granting relief inserted, that alone might be very difficult to do; but it may afterwards happen that the case is carried to the Supreme Court where the original judgment may be affirmed and the judgment in appeal reversed, or it may be varied, which would involve a further physical alteration of the books. If, again, an appeal to the Privy Council be had, and the same process has to be pursued with the certificate of its judgment, it is quite possible to conceive that the judgment books would in time, in some places present a rather curious spectacle. The objections to making physical alterations in existing documents was considered by Fry, J., in *Fox v. Bearblock*, 45 L. T. N. S., 470. The application before him was to make a physical alteration in a Chief Clerk's certificate by striking out certain passages, casting doubt on the applicant's legitimacy. In his judgment Fry, J., says: "I have caused inquiries to be made, not only of my own chief clerks, but of the chief clerks of the Master of the Rolls, and the Vice Chancellors, and I find that, with the exception of one or two cases in which one chief clerk of one of the Vice-Chancellors has made alterations in the certificate, the uniform practice has been not to vary the actual certificate prepared by the chief clerk. In my judgment the practice is right and proper, because I think that anything like tampering with existing documents is a practice to be disapproved of and discouraged. In the next place, the alterations