

MEREDITH, C.J.C.P., said that the opinion of the Court was that a case should be stated upon the following questions:—

(1) Whether there was a want of direction by the trial Judge to the jury, vitiating the verdict, in not pointedly directing the attention of the jury to the fact that, without the testimony of the woman, there was no evidence to support a conviction, and to the contradictory statements made by her going to shew that she was not a credible witness.

(2) Whether there was misdirection or nondirection or both, vitiating the verdict, in that part of the Judge's charge dealing with the evidence regarding getting the axe and the effect of that evidence, and in not charging the jury as to the law respecting justification or excuse in self-defence.

Pending the hearing of the case, execution of the judgment of the Court should be stayed; the time of execution should be postponed for one calendar month.

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SECOND DIVISIONAL COURT.

JANUARY 12TH, 1921.

ROSENBES v. ROSENBES.

*Appeal—Motion for Leave to Appeal to Supreme Court of Canada after Time for Appealing Expired—Opposite Party not Notified—Amount Involved Insufficient—Exceptional Circumstances not Shewn—No Reason to Doubt Correctness of Judgment of Appellate Division—Delay in Moving.*

Motion by the defendant for leave to appeal to the Supreme Court of Canada against a judgment in this action pronounced by this Court on the 31st October, 1919 (17 O.W.N. 137).

The motion was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, MIDDLETON and LENNOX, JJ.

The defendant, in person, supported the motion.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the application must be refused for these reasons:—

1. No notice of it was given to the plaintiff.
2. The amount involved is not sufficient to give a right of appeal; and there is nothing exceptional in the case which would warrant taking it out of the class of unappealable cases.
3. There is no reason to doubt the correctness of the judgment.
4. There has been too much delay in making this application.

*Motion refused.*