Full Court.]

RENDELL 7. McLELLAN.

[Nov. 17, 1902.

Appeal-Amending judge's notes of evidence-Practice.

On the hearing of an appeal from a County Judge, counsel for appellant applied to introduce further evidence alleged to have been omitted from the Judge's notes of evidence taken at the trial.

The Court refused the application holding that where a party desires to introduce on an appeal, evidence alleged to have been omitted from the Judge's notes of evidence, he should first apply to the Judge appealed from to amend his notes.

Clement, for appellant. Davis, K.C., for respondent.

Full Court.]

Nov. 17, 1902.

CENTRE STAR 7. ROSSLAND MINERS' UNION.

Practice—Amending pleadings — Exceeding terms of order allowing— Waiver of right to object.

Two weeks after the receipt of an amended statement of claim defendants' solicitors wrote plaintiff's solicitor that they would "prepare and file a new statement of defence according to the amendment you have made," and two weeks later took out a summons to strike out amended statement of claim on the ground that it exceeded the terms of the order authorizing amendment.

Held, reversing FORIN, Lo. Co. J., that the defendants had waived their right to object.

A. C. Galt, for appellant. Taylor, K.C., for respondents.

Full Court.

IN RE SMITH.

[Nov. 25, 1902.

Rivers and Streams Act, sec. 12-Appeal-Right to-Party interested.

Appeal from an order of SPINKS, Co. J., ordering that one S. C. Smith be at liberty to charge tolls for boomage, rafting, etc., of logs, etc., on the Spillimacheen River. The appeal was brought by one Ryan who claimed to be a lessee from the Dominion Government of timber berths adjoining the said river, but who was not a party to the proceedings before the County Judge.

Sec. 12 of the Rivers and Streams Act provides that if a "party interested" is dissatisfied with the judgment of the County Judge he may appeal to the Supreme Court:

Held, that "party interested" means one who was a party to the proceedings before the Judge appealed from. Appeal dismissed with costs, IRVING, J., dissenting.

Fulton, K.C., for appellant. Davis, K.C., for respondent.