

Chan. Div.]

BEATY V. BRYCE—O'DONOHUE V. WHITTY.

[Chan. Div

REPORTS.

ONTARIO.

(Reported for the LAW JOURNAL.)

CHANCERY DIVISION—DIVISIONAL COURT.

BEATY V. BRYCE.

Appeal to Court of Appeal—Leave to appeal—O. J. A. ss. 33, 34.

When the amount involved in an interpleader issue was under \$500, but it was alleged that the decision of the Divisional Court desired to be appealed from, affected the right to other property amounting to \$2,000,

Held, that this was not a sufficient ground for granting leave to appeal.

[BOYD, C., PROUDFOOT and FERGUSON, JJ.—Dec. 7.

This was an interpleader issue tried before GALT, J., who found in favour of the plaintiff, but upon motion to the Divisional Court his finding had been reversed, and the issue found in favour of the defendants. The amount involved in this issue was under \$500.

W. Cassels, with him *Allan Cassels*, for the plaintiff, now moved for leave to appeal from the decision of the Divisional Court to the Court of Appeal, on the ground that the decision affected the right to other property of the value of \$2,000.

Wardrope, for the defendant, opposed the application.

The CHANCELLOR.—We are all of opinion that there is no sufficient ground shown for granting the leave which is asked. The restriction which the Judicature Act has imposed on the right of appeal is not to be lightly removed. The decision in this matter is not conclusive as to the right to the other property which has been referred to. If any contention arise as to that, the question may then be carried to the Court of Appeal.

Motion refused with costs.

O'DONOHUE V. WHITTY.

Appeal to Court of Appeal—Construction of statute—Leave to appeal—When granted—O. J. A. ss. 33, 34.

When the construction of a statute is involved in a judgment sought to be appealed from,

Held, leave to appeal to the Court of Appeal should be granted, although the amount involved be less than \$200.

[BOYD, C., PROUDFOOT and FERGUSON, JJ.—Dec. 7.

In this case the plaintiff had appealed from the ruling of the taxing officer, allowing certain costs upon a taxation as between solicitor and client. The ruling of the taxing officer had been reversed by Proudfoot, J., who held that the costs could not be recovered, because the solicitors had been guilty of negligence, and in dealing with the matter he had pronounced an opinion as to the proper construction of the statutory form of power of sale in short form mortgages. From this decision an appeal was had to the Divisional Court, which held there had been no negligence, and reversed the order of PROUDFOOT, J.

O'Donohue, Q. C., the plaintiff in person, now applied for leave to appeal to the Court of Appeal from the decision of the Divisional Court. He was stopped by the Court.

Hoyles, for the solicitors whose costs were the subject of taxation, opposed the application. He referred to *Ko Khine v. Snadden*, L. R. 2 P. C. 50; *Brown v. McLaughan*, L. R. 3 P. C. 458; *Johnston v. St. Andrews*, L. R. 3 App. Ca. 159; Judicature Act, ss. 33, 34.

The amount involved is less than \$200. The question of the construction of the statute R. S. O. c. 104, is of no importance. Even if notice of sale be not given upon exercising a power of sale, it is now only a question of damages. Here the real ground of the decision was that there was no negligence on the part of the solicitors, even if they were mistaken in their construction of the Act.

The CHANCELLOR.—Notwithstanding all that has been argued by Mr. Hoyles, we think this is a proper case in which to grant leave to appeal. The construction which has been placed on clause 14 of the form appended to the "Act respecting short forms of Mortgages," (R. S. O. c. 104) by the judgment sought to be appealed from is a matter of general interest, and affecting solicitors at large and other cases and other