

OSLER, J. A.

MARCH 18TH, 1905.

C.A.—CHAMBERS.

## MOLSONS BANK v. STEARNS.

*Appeal—Court of Appeal—Leave to Appeal from Judgment at Trial.*

Motion by defendant for leave to appeal direct to the Court of Appeal from the judgment at the trial, passing over a Divisional Court.

W. E. Middleton, for defendant.

C. S. MacInnes, for plaintiffs.

OSLER, J.A.—The amount involved is \$5,000. Defendant asserts an intention to appeal to the Court of Appeal if he is obliged to go to a Divisional Court and fails there. The question involved may be said to be a mixed question of law and fact, and the case is one in which an appeal to the Supreme Court of Canada would lie.

I have read the notes of the decided cases on this point. Each seems to stand on its own circumstances.

My own view is, that it is to the interest of all parties that the series of possible appeals should be reduced by one in cases of substantial importance; and that leave ought to be granted here.

Costs in the appeal to both parties.

STREET, J.

MARCH 20TH, 1905.

WEEKLY COURT.

RE McVICAR.

*Will—Distribution of Estates—Money Paid to Compromise Action for Reconveyance of Land—Realty or Personalty—Construction of Will—Gift—Income or Corpus.*

Motion by the administrators of the estate of J. F. Ruttan, deceased, for an order under Rule 938 determining certain questions arising in the winding-up of the estates of Christina McVicar and Victoria McVicar.

A. B. Aylesworth, K.C., for the administrators of the estate of J. F. Ruttan.

C. A. Moss, for R. A. Ruttan, trustee of the wills of Christina McVicar and Victoria McVicar, appointed after the death of J. F. Ruttan, the executor.

A. R. Clute, for Calla Goldsmith.