Full Court.] [Dec. 2, 1896.

MASSEY-HARRIS CO. *v.* MCLAREN.

Appeal from County Court—Jurisdiction—Amount in question.

The plaintiffs, who had sued in a County Court to recover the sum of $55.43, recovered a judgment for $39.10, the defendant having been allowed the difference between these two amounts in respect of a counter claim against the plaintiffs for a breach of warranty. Defendant, being dissatisfied with the amount allowed him, appealed to the Full Court, when the language of section 315 of the "County Courts Act," as amended by the statute of 1896, chapter 3, came up for construction. That section provides that such an appeal shall be to a single judge where "the amount in question does not exceed the sum of $50," and to the Court in banc when it does exceed that amount.

Held, that "the amount in question" does not necessarily mean the amount of the plaintiff's claim, but that the correct course is to look at the judgment as it affects the interest of the party who is prejudiced by it, and who seeks to relieve himself from it by an appeal, and that the defendant's appeal should have been to a single judge because the amount adjudged against him, and in respect of which he sought relief, was under $50.

Appeal struck out with costs.

Allan v. *Pratt*, 13 A. C. 780, and *Monette* v. *Lefebvre*, 16 S.C.R. 387, followed.

W. A. MacDonald, Q.C., for plaintiff.

A. D. Cameron, for defendant.

Province of British Columbia.

SUPREME COURT.

McCREIGHT, DRAKE & MCCOLL, JJ.] [Dec. 7, 1896.

MCGREGOR ET AL. *v.* CRANE.

Practice—Judgment in default of defence—Demand for statement of claim—Rules 73 and 182 (b.)

This was an appeal from an order of Walkem, J., setting aside judgment signed in default of defence on the ground that the writ was not specially endorsed. The endorsement on the writ claimed $2,000.51 money received by defendant for the use of plaintiffs. The defendant entered an appearance on which was a memorandum demanding a statement of claim, but did not serve such a demand as is provided by Rule 182 (b).

Held, (without going into the question as to whether or not the writ was specially endorsed) following *Mason* v. *Mason*, 4 B. C. R. 172 that no demand for a statement of claim having been served, the judgment was regularly signed.

Order varied by defendant being allowed to defend on giving within 30 days security in the sum of $1,000 and paying the costs of entering judgment, and in case he does not, plaintiff's judgment to be restored. Costs of the appeal to be costs in the cause.

Frank Higgins, for plaintiff.

Lindley Crease, for defendant.