

a considerably shorter time than that fixed by the trial Judge, to be ascertained upon a reference. The defendants contended in this Court that the judgment dismissing their counterclaim was erroneous, and their appeal was dismissed.

The plaintiffs' counsel on the argument before me said the plaintiffs' claim in the reference would be less than \$1,000, but I think I cannot act upon that statement. Their claim in their pleading was \$1,500, and, although the judgment which they recovered was only \$1,000, I am unable to see that they would be limited to that sum upon the reference under the present judgment.

I therefore think that the matter in controversy in this appeal, on the plaintiffs' claim, exceeds the sum or value of \$1,000 within clause (e) of the Act.

But, however that may be, I think it is a sufficient answer to the plaintiffs' objection, that the defendants' claim upon their counterclaim is the same in their proposed appeal to the Supreme Court as it was at the trial and in the appeal to this Court, namely, the sum of \$1,223, and that being so, they are entitled to appeal without leave.

I overrule the objection and allow the bond.

MACLENNAN, J.A.

MAY 6TH, 1902.

C. A.—CHAMBERS.

HAYNES v. EDMONDS.

*Appeal—To Court of Appeal — Surrogate Court Case — Divisional Court—Further Appeal.*

An appeal by a party to the Court of Appeal from an order of a Divisional Court dismissing his appeal from a judgment of a Surrogate Court does not lie. *McVeain v. Ridler*, 17 P. R. 353, applied.

Motion by plaintiff to quash an appeal by defendant from order of a Divisional Court dismissing his appeal from judgment of a Surrogate Court admitting to probate a paper propounded as a will.

J. E. Jones, for plaintiff.

W. J. Tremear, for defendant.

MACLENNAN, J.A.—I am of opinion that there is no right to bring this appeal, and that it should be quashed.

Section 36 of the Surrogate Courts Act gives an appeal from judgments of a Surrogate Court to a Divisional Court of the High Court, instead of to the Court of Appeal, as the law was prior to 58 Vict. ch. 13, sec. 45. And this right of appeal is also embodied in the Judicature Act, R. S. O.