

MIDDLETON, J., IN CHAMBERS.

MARCH 20TH, 1920.

CLARKSON v. DAVIES.

Appeal—Leave to Appeal from Order of Judge in Chambers Consolidating Actions—Importance of Question Raised—Doubt as to Correctness of Order—Consolidation of Actions—Indirect Substitution of New Plaintiff for one Disqualified.

Motion by the defendants for an order staying all proceedings by the plaintiffs in respect of the action begun by G. T. Clarkson, liquidator of the Dominion Permanent Loan Company, and John R. Young, representing a class, against E. C. Davies and others, on the 15th March, 1920, and for leave to appeal from an order made by LENNOX, J., on the 19th March, 1920, consolidating that action with an action begun by Clarkson, as liquidator, and Kathleen A. Hancock, representing a class, against Davies and others, on the 15th August, 1919.

A. C. McMaster, for the defendants.

J. W. Bain, K.C., for the plaintiffs.

MIDDLETON, J., in a written judgment, said that the question raised seemed to be of sufficient importance and the solution effected by Lennox, J., sufficiently doubtful to justify the granting of leave to appeal. When it is found that a plaintiff, representing a class, is personally disqualified, it has been held that an amendment should not be made by adding or substituting a new plaintiff. If this can be accomplished by adjourning the trial and issuing a new writ and then proceeding with the trial of both actions together in this indirect way, an end is attained by circumvention which cannot be attained directly. The new plaintiff is in this way relieved from assuming the burden of costs that would have to be taken if he were added or substituted.

It is most dangerous to do indirectly that which cannot be done directly.

Leave to appeal granted—the appeal to be set down at once.