

DAWSON and GENET v. SHAW

Full Court (Purcell, C.J., Pennington, J. and McDonnell, Ag. J.):
January 23rd, 1920

- [1] Civil Procedure — judgments and orders — date of judgment — judgment dates from day on which pronounced even if signed at later date — formal signing is ministerial not judicial act: The assumption of a judicial office takes place when the oath of allegiance and judicial oath are taken and does not relate back to the first moment of the day, and since a judgment dates from the day on which it is pronounced even if it is signed at a later date its validity is therefore affected neither by the fact that it is made by a judge who, later that day, ceases to hold that particular judicial office, nor by the fact that it is signed by him in a different judicial capacity on a subsequent day, the formal signing being a ministerial and not a judicial act (page 2, lines 3—18). 5 10
- [2] Constitutional Law — judiciary — assumption of office — judge assumes office when takes oath of allegiance and judicial oath — assumption does not relate back to first moment of day: See [1] above. 15
- [3] Courts — Supreme Court — judges of the Supreme Court — assumption of office — judge assumes office when takes oath of allegiance and judicial oath — assumption does not relate back to first moment of day: See [1] above. 20

The appellant appealed against an order made upon an originating summons.

The order on the originating summons was made by McDonnell, Ag. C.J. (as he then was). Later the same day the office of Acting Chief Justice was assumed by his successor, who took the oath of allegiance and the judicial oath. McDonnell, Ag. J. signed the order on a subsequent day. 25

The appellant appealed against the order contending that it was ineffective since McDonnell, Ag. J. no longer held the office of Acting Chief Justice when it was made because he was relieved of that office as from the first moment of the day on which the order was made; alternatively because he signed the order at a later date, when the new Acting Chief Justice was established in office. 30

The appeal was dismissed. 35

Shorunkeh-Sawyer for the appellant;
Graham for the respondent.

PURCELL, C.J.:

This is an appeal from an order dated May 19th, 1919, made by McDonnell, Ag. C.J. upon an originating summons for the deter- 40

mination of certain questions arising from the terms employed in the will of the late Joseph Jackson Shaw.

5 I am satisfied that at the time when Mr. McDonnell made the order appealed against in the present case, he was still Acting Chief Justice, and that the arrival in the Colony of Mr. Justice King-Farlow, who was to relieve him in that office, did not affect his status until Mr. King-Farlow had taken the oath of allegiance and the judicial oath before His Excellency. Mr. King-Farlow's assumption to the Acting Chief Justiceship did not relate back to 10 the first moment of the day upon which he took those oaths, but dated from the moment at which he took them. Proceedings commenced by an originating summons constitute an action (*The Annual Practice, 1920*, at 8), an order upon which dates from the day upon which it is pronounced, as was pointed out by 15 King-Farlow, Ag. C.J. as counsel admits, on the hearing of the summons filed on June 12th. Finally, the signing of the formal order upon an originating summons is a ministerial and not a judicial act.

20 As the usual procedure in interlocutory summonses has, by a misapprehension, hitherto been followed in originating summonses in this Colony, I hold that each party should bear its own costs in this appeal

PENNINGTON, J. and McDONNELL, Ag. J. concurred.

Appeal dismissed

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