

# CASES

ARGUED AND DETERMINED

IN THE

# SUPREME COURT

OF CANADA.

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JANUARY SESSIONS, 1877.

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ROBERT BOAK, ET AL. - - - - - APPELLANTS;

AND

THE MERCHANTS' MARINE IN- }  
SURANCE COMPANY..... } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA  
SCOTIA.

*Appeal in matter of Discretion—Supreme and Exchequer Court Act,  
Sec. 22.*

*Held:*—Under Section 22 of the Supreme and Exchequer Court Act no appeal lies from the judgment of a Court granting a new trial, on the ground that the verdict was against the weight of evidence, that being a matter of discretion.

This was an appeal from the judgment of the Supreme Court of Nova Scotia, of the 16th May, 1876, making a *rule nisi* absolute for a new trial, and setting aside a verdict obtained by the Appellants in an action brought against the Respondents, to recover \$4,500 under a marine insurance policy for the loss of the cargo and hull of the brigantine "Alexina."

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PRESENT:—The Chief Justice, and Ritchie, Strong, Taschereau, Fournier and Henry, JJ.

The cause came on for trial before Mr. Justice Smith of the Supreme Court of Nova Scotia, and a Jury, on the 12th May, 1875, and a verdict was given for the Appellants.

This verdict was moved against, and on the 19th May, 1875, it was ordered that the verdict for the Plaintiffs be set aside with costs, and a new trial granted. The rule was moved on the following grounds :

1st. That the verdict is against law and evidence.

2nd. For the improper reception and rejection of evidence.

3rd. For misdirection of the learned Judge.

The judgment of the Court making the *rule nisi* absolute, was delivered by Ritchie, J. and Wilkins, J.

Among other pleas, the Defendant pleaded that the vessel did not proceed upon and continue on the voyage indicated to the insurers, and that material facts were concealed from them, and no sufficient proof of loss given. The reason given by Ritchie, J., for making the rule absolute was that the verdict on these two points was against the weight of evidence ; and Wilkins, J., concluded his judgment as follows : " My own mind is in a state of doubt and uncertainty, whether the cause of the loss of this vessel was (she being seaworthy, severity of the gale, or unseaworthiness that disabled her from effectually resisting it. The doubt could not have existed if the insured had had the vessel regularly surveyed at St. George's Bay, and thoroughly repaired there to the extent demanded by the result of the survey. My opinion is, that justice to the Defendant's Company demands that this case should be submitted to another investigation."

22nd January, 1877.

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Mr. *W. H. Kerr*, Q. C., for Appellant :

Before arguing on the merits of this case it is desirable to have a decision on the question of jurisdiction of this Court which is raised in Respondent's factum as follows : "The Respondents will contend that no appeal lies from the judgment of the Court below in having granted a new trial, that being matter of discretion only, and decided in whole or in part, on the ground that the verdict was against the weight of evidence."

The rule was made absolute, as appears by the printed case : 1st. Because the verdict is against law and evidence. This brings the case under the 20th section of the Supreme Court Act which declares that an appeal shall lie from a judgment upon any motion for a new trial upon the ground that the Judge has not ruled according to law.

[THE CHIEF JUSTICE : If judgment is wrong with regard to misdirection there still remains the fact that the new trial was granted on the ground that the verdict is against the weight of evidence, and we cannot get over that.]

The judgment, it must be admitted, is difficult to understand, but there was no reservation of any ground urged in support of application.

Mr. *Cockburn*, Q.C. for Respondent, was not called upon.

23rd January, 1877.

The judgment of the Court was delivered by  
THE CHIEF JUSTICE :

We have read the judgments delivered in the Court below, we are satisfied that the verdict in this case was set aside as against the weight of evidence, and that

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the application in this case being upon a matter of discretion only, it comes under the 22nd section of the Supreme Court Act. We do not think that the rule of the Court below was made absolute granting the new trial for misdirection, and we are, therefore, of opinion that this appeal should be quashed with costs.

*Appeal quashed with costs.*

Attorneys for Appellant : *Kerr & Carter.*

Attorney for Respondent : *J. N. Ritchie.*