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JOSEPH DORZEK, BY HIS NEXT FRIEND JOHN DORZEK, THE SAID JOHN DORZEK, AND CLEMENTINE DORZEK (PLAINTIFFS) ..... APPELLANTS; *Feb. 20. *Feb. 27.

AND

McCOLL FRONTENAC OIL COMPANY, LIMITED (DEFENDANT)..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Appeal—Jurisdiction—Amount in controversy in appeal—Claims for damages, by infant suing by father as next friend, and by father, in same action—Appeal by them from judgment reversing judgment at trial in their favour for a sum to each of less than $2,000, the sums together exceeding $2,000—Alternative motion for special leave to appeal.

The action was for damages resulting from the infant plaintiff being struck by defendant's motor truck. The infant, suing by his father as next friend, claimed for personal injuries, and his father claimed for hospital and medical expenses and loss of work. At trial the infant recovered $1,875, and the father $284.25. The Court of Appeal for Ontario reversed the judgment and dismissed the action. Plaintiffs appealed *de plano* to this Court. The present motion was by way of appeal from the Registrar's refusal to affirm jurisdiction.

Held: This Court had not jurisdiction. To give jurisdiction in regard to either appellant, the amount in controversy in the appeal with regard to him must exceed $2,000. Each cause of action was complete in itself and distinct from the other. Appellants were in the same position (as to jurisdiction) as if separate actions had been brought and separate judgments rendered. The amounts recovered at trial could not be added to give jurisdiction.

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"*L'Autorité,*" *Limitée* v. *Ibbotson,* 57 Can. S.C.R. 340, *Armand* v. *Carr,* [1926] Can. S.C.R. 575, and *McKee* v. *City of Winnipeg,* [1930] Can. S.C.R. 133, cited.

An alternative motion for special leave to appeal was refused.

On an application for special leave to appeal, within s. 41 (*f*) (amount exceeding $1,000) of the *Supreme Court Act,* the mere fact that an important point of law is involved in the appeal is not in itself a sufficient reason for granting leave, if the point has already been the subject of a decision in this Court or in the Judicial Committee of the Privy Council.

MOTION by way of appeal by the plaintiffs from the order of the Registrar declaring that the Supreme Court of Canada has not jurisdiction to hear and determine their appeal from the judgment of the Court of Appeal for Ontario, which reversed the judgment at trial in favour of the plaintiffs, and dismissed the action, which was for damages resulting from the infant plaintiff being struck by defendant's motor truck.

The material facts of the case for the purpose of this motion are sufficiently stated in the judgment now reported, and are indicated in the above headnote.

In the alternative, the plaintiffs moved for an order granting them special leave to appeal (leave having been refused by the Court of Appeal).

The motion was dismissed with costs.

W. F. Schroeder for the motion.

G. F. Henderson K.C. contra.

The judgment of the court was delivered by

RINFRET J.—This motion is made on behalf of the appellants by way of appeal from an order of the Registrar refusing to affirm the jurisdiction of this Court *de plano.*

In the alternative, the Court is moved for an order granting the appellants special leave to appeal.

As stated in the judgment of the Registrar, there are three plaintiffs-appellants: 1. The infant Joseph Dorzek, suing by his next friend John Dorzek; 2. John Dorzek, the father of the infant; 3. Clementine Dorzek, the mother of the infant.

By the trial judgment, the infant recovered from the defendant $1,875; and it was ordered that the sum should be brought into court and remain there until he attains the age of twenty-one years, the income thereon, in the

meantime, to be paid to him; John Dorzek recovered $284.25; and Clementine Dorzek recovered $46.87.

The Court of Appeal reversed the trial judgment and dismissed the action.

As pointed out by the Registrar, the claims of the three plaintiffs were separate and distinct, each claiming in respect of loss personal to each. The infant's claim was for damages resulting from the physical injuries suffered by him as a consequence of the accident. The father's claim was for damages made up of hospital and doctors' fees and charges, including two weeks' loss of work. The mother's claim was for loss of one month of her wages. Each plaintiff recovered for the separate damages they respectively suffered.

No amount recovered individually by the plaintiffs is sufficient to give jurisdiction to this court; but the appeal from the order of the Registrar is asserted upon the ground that the action was in the nature of a joint action brought by the father on behalf of himself and his infant son and that the two amounts awarded to the infant and to the father must be regarded as one for the purposes of an appeal to this court.

In circumstances such as the above, although there be but a single judgment, the appellants, for purposes of jurisdiction, are in the same position as if separate actions had been brought and separate judgments had been rendered. Each cause of action is complete in itself and distinct from the other. The amount of the matter in controversy in the appeal to this court must therefore exceed the sum of $2,000 with regard to each individual appellant. (*"L'Autorité," Limitée* v. *Ibbotson & others* (1); *Armand* v. *Carr* (2); *McKee* v. *City of Winnipeg* (3).

In the present case, the next friend by whom the infant sued also recovered against the defendant. The decision of the Registrar was that this did not "justify the contention that the two (amounts recovered) may be added for the purpose of giving this Court jurisdiction." We are of opinion that the Registrar has correctly stated the rule applicable in such cases.

(1) (1918) 57 Can. S.C.R. 340. (2) [1926] Can. S.C.R. 575.
(3) [1930] Can. S.C.R. 133.

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The appeal from the order of the Registrar refusing to affirm jurisdiction ought, therefore, to be dismissed.

Dealing now with the alternative motion for an order granting special leave to appeal: Leave having been refused by the Court of Appeal of Ontario, the Supreme Court may grant such leave only if the matter in controversy in the appeal comes within one or the other of subsections *a, b, c, d, e* and *f* of section 41 of the *Supreme Court Act*. The only subsection applying here is subsection (*f*): where " the amount * * * in controversy in the appeal will exceed the sum of $1,000 "; and the subsection applies only to the case of the infant plaintiff. Moreover, section 41 provides for " a special leave to appeal," which implies the existence of special reasons for granting leave.

In the premises, the special ground put forward by the appellant is stated as follows:

This is a motor car accident. In such cases, the statute (*The Highway Traffic Act*—sec. 42 of ch. 251 of R.S.O., 1927) places upon the defendant the onus of proving that the loss or damage complained of did not arise through his negligence or improper conduct. In the face of a definite finding made by the jury that the defendant has failed to discharge the onus, a court of appeal has no right to disturb such finding and to substitute for it its own view of the facts. If, on the other hand, the court of appeal was of opinion that the verdict of the jury was perverse, the proper judgment was not to dismiss the action, but to order that there should be a new trial. It is submitted that, having regard to the large number of motor car cases throughout Canada, these are matters of public importance and would afford a sufficient reason to grant the special leave prayed for.

The question as to the effect of the provisions of sec. 42 of the Ontario *Highway Traffic Act* and of similar statutes has more than once been considered by the Supreme Court and by the Privy Council. Only recently, in the case of *Winnipeg Electric Co.* v. *Geel* (1), this Court and the Judicial Committee had occasion to state the law in this respect very fully and, at all events, with regard to each of its aspects in relation to the questions now sought to be discussed by the appellant. The Court should not grant

(1) [1931] Can. S.C.R. 443; [1932] A.C. 690.

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special leave to appeal for the mere purpose of reasserting the law it has already expounded. The principles which are to govern were clearly exposed in the *Geel* case (1) and we have no doubt that the courts of this country are fully aware of their duty to apply them where occasion arises.

In this particular case, we do not find in the judgment of the Court of Appeal any statement in conflict with the judgment *re Winnipeg* v. *Geel* (1), or any intention of disregarding the law as it was there laid down.

But this further ought to be said: The mere fact that a point of law—important though it may be—is involved in the appeal is not in itself a sufficient reason why special leave should be granted, if the point has already been the subject of a decision in this Court or in the Judicial Committee.

The motion of the appellant should accordingly be dismissed with costs.

Motion dismissed with costs.

Solicitors for the appellants: *Chown & Chown.*
Solicitors for the respondent: *Henderson, Herridge & Gowling.*

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*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crocket JJ.

(1) [1931] Can. S.C.R. 443; [1932] A.C. 690.