

<sup>1937</sup>  
 \* Nov. 22.

JESSIE WHITE AND JAMES WHITE }  
 (DEFENDANTS) ..... } APPLICANTS;  
 AND  
 THELMA McQUILLEN AND WIN- }  
 STON McQUILLEN (PLAINTIFFS)... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Appeal—Leave to appeal—Jurisdiction—Amount in controversy—Supreme Court Act, R.S.C., 1927, c. 35, s. 41, par. (f).*

In an action by the occupants of a motor-car to recover against the defendants, owner and driver respectively of another motor-car, for damages caused by a motor-car accident, the Court of Appeal for Ontario gave judgment that plaintiff A recover against the defendants \$450 and that plaintiff B recover against the defendants \$750. On motion by defendants for special leave (refused by the Court of Appeal) to appeal to this Court—

*Held:* Motion dismissed, as not competent under the *Supreme Court Act* (R.S.C., 1927, c. 35), s. 41, par. (f) (providing for leave to appeal “in cases \* \* \* in which the amount or value of the matter in controversy in the appeal will exceed the sum of \$1,000”).

Motion on behalf of the defendants for special leave to appeal to this Court from the judgment of the Court of Appeal for Ontario (1).

The action was to recover for damages suffered by the plaintiffs by the wrecking of the motor-car owned and driven by the plaintiff Winston McQuillen, in which his co-plaintiff was a passenger, and incurred, so plaintiffs alleged, in an effort to avoid a collision with the motor-car owned by the defendant James White and driven (negligently, so plaintiffs alleged) by the defendant Jessie White. In the statement of claim the plaintiff Winston McQuillen claimed \$742.59 damages and his co-plaintiff claimed \$3,000 damages.

The trial judge, McEvoy J., dismissed the action with costs. He endorsed on the record: “Should I be wrong and it is held the plaintiffs are entitled to damages, would assess damages to plaintiff Winston McQuillen at \$450 and to Thelma McQuillen at \$750.” No fault was found with this assessment.

\* PRESENT:—Duff C.J. and Crocket, Davis, Kerwin and Hudson JJ.

The plaintiffs appealed to the Court of Appeal for Ontario. That court (Masten J.A. dissenting) allowed the appeal with costs and directed that judgment be entered in favour of the plaintiff Winston McQuillen for \$450, and in favour of the plaintiff Thelma McQuillen for \$750, with the costs of the action. The formal judgment vacated and set aside the judgment of McEvoy J. and ordered and adjudged "that the plaintiff Winston McQuillen do recover against the defendants the sum of \$450 and that the plaintiff Thelma McQuillen do recover against the defendants the sum of \$750," together with costs of the appeal and of the action.

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Special leave to defendants to appeal was refused by the Court of Appeal. Defendants applied to the Supreme Court of Canada for special leave to appeal.

*J. R. Cartwright K.C.* for the motion.

*G. A. Drew K.C. contra.*

A preliminary objection as to jurisdiction to entertain the motion was taken on behalf of the respondents, on the ground that there was no case before the Court in which "the amount or value of the matter in controversy in the appeal will exceed the sum of \$1,000" within par. (f) of s. 41 of the *Supreme Court Act* (R.S.C., 1927, c. 35).

After hearing argument of counsel for the motion, the Court, after consideration, gave judgment orally dismissing the motion, on the ground that it was not competent by reason of said par. (f) of s. 41.

*Motion dismissed with costs.*

Solicitors for the applicants: *Smith, Rae, Greer & Cartwright.*

Solicitor for the respondents: *J. L. Sheard.*

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