

1889 DENNIS AMBROSE O'SULLIVAN } APPELLANT;
 *Jan. 19, 21. (PLAINTIFF)..... }
 *Mar. 28. AND
 — JOHN N. LAKE (DEFENDANT)..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Appeal—Motion for New trial—Jurisdiction—R. S. C. ch. 135 sec. 24 (d).

The defendant in an action against whom a verdict has passed at the trial moved for a new trial before the Divisional Court on the grounds of misdirection, surprise and the discovery of further evidence, and the motion was granted on the ground of misdirection (15 O. R. 544). The plaintiff appealed and the Court of Appeal held that there was no misdirection, but that the order of the Divisional Court directing the case to be submitted to another jury had better not be interfered with, the circumstances of the case being peculiar.

Held, that as the judgment of the Court of Appeal did not proceed upon the ground that the trial judge had not ruled according to law, no appeal would lie to the Supreme Court of Canada from its decision (1).

In the factum of the respondents no objection was made to the jurisdiction of the Supreme Court, but it was urged that the appeal should not be entertained and that the court should not interfere with the discretion in favor of a new trial exercised by the two lower courts, the circumstances, it was contended, being stronger than those in the *Eureka Woolen Mills Co. v. Moss* (11 Can. S. C. R. 91) (2). As the appeal was quashed for want of jurisdiction the costs imposed were only costs of a motion to quash.

Appeal quashed with costs.

Solicitors for appellant: *O'Sullivan & Anglin.*

Solicitors for respondent: *MacLaren. MacDonald,*
Merritt & Shepley.

(1) By the Supreme and Exchequer Courts Act, R. S. C. ch. 135 sec. 24 (d), an appeal shall lie to the Supreme Court from the judgment upon any motion for a new trial on the ground that the judge has not ruled according to law.

(2) In *Eureka Woolen Mills Co.*

v. Moss the court said: "We must not encourage appeals to this court in such cases, and we wish it understood that where a court below has ordered a new trial on the ground that the verdict is against the weight of evidence this court will not interfere."

* PRESENT—Sir W. J. Ritchie C.J. and Fournier, Taschereau, Gwynne and Patterson JJ.