MUNICIPAL DISTRICT OF BEAVER DAM (DEFENDANT) ..... } APPELLANT;

1932
*Feb. 5.
*Feb. 9.

AND

LILLIE BELLE STONE AND JOHN HENRY URE, ADMINISTRATORS OF THE ESTATE OF WALTER GEORGE STONE, DECEASED (PLAINTIFFS) ..... } RESPONDENTS.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Appeal—Jurisdiction—Action for damages taken from jury at trial and dismissed—New trial ordered by appellate court—Appeal by defendant to Supreme Court of Canada—Whether any "amount in controversy in the appeal"—Supreme Court Act, s. 39.

At the trial of an action (in which plaintiffs claimed $20,000 damages) the judge, at close of plaintiffs' evidence, took the case from the jury

*PRESENT: Duff, Rinfret, Lamont, Smith and Cannon JJ.

1932

MUNICIPAL DISTRICT OF BEAVER DAM. v. STONE ET AL.

and dismissed the action. On appeal by plaintiffs, the Appellate Division, Alta., ordered a new trial. Defendant appealed to this Court. Plaintiffs contended that, there having been no finding of any amount, there was no "amount in controversy in the appeal" (*Supreme Court Act,* s. 39) and this Court was without jurisdiction.

Held, that the objection to the jurisdiction was not well taken.

On the merits, defendant's appeal was dismissed.

APPEAL by the defendant from a judgment of the Appellate Division of the Supreme Court of Alberta.

The action was brought by the administrators of the estate of one Stone, deceased, for the benefit of the deceased's wife and son, for damages (the amount claimed being $20,000) resulting from the deceased's death, which plaintiffs alleged was caused by defendant's negligence. Plaintiffs alleged that deceased died as the result of an accident which occurred when he was driving a team of horses attached to his wagon, and that the accident was due to the defective condition of a culvert within the defendant municipality.

The action was tried before Walsh J., with a jury. At the close of the evidence for the plaintiffs, the judge, on motion by defendant's counsel, took the case from the jury and gave judgment dismissing the action, on the ground that there was nothing to establish any connection whatever between the injury to deceased and the defective condition of the highway. On appeal by the plaintiffs, the Appellate Division, Alta., allowed the appeal and ordered a new trial. The defendant appealed to this Court.

Counsel for the respondents raised the question of the jurisdiction of this Court, under the circumstances, to hear the appeal, contending that, there having been no finding of any amount, there was no "amount in controversy in the appeal" (*Supreme Court Act,* s. 39). This question was reserved along with the determination of the appeal on the merits.

O. M. Biggar K.C. for the appellant.

Robert Ure for the respondents.

THE COURT.—The appeal should be dismissed with costs.

We have come to the conclusion that Mr. Ure's point as to jurisdiction is not well taken. The necessary result of accepting the view advanced by him would be that an

appeal from a judgment ordering a new trial (on the ground that the trial judge has improperly taken the case from the jury) is only permissible upon obtaining special leave under section 39. We think we should be misinterpreting the intention of the Legislature if we ascribed such effect to the amendments of 1920. Besides, the adoption of such a construction would involve a reversal of the practice which has obtained since those amendments came into force.

Appeal dismissed with costs.

Solicitors for the appellant: *Ford, Miller & Harvie.*
Solicitor for the respondents: *Robert Ure.*