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* Oct. 6.

BIRD v. BATTAGIN

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

Motor vehicles—Collision of motor cycle with motor car—Measure of damages—Concurrent findings of fact in trial and appellate courts—The Vehicles and Highways Act, 1924, c. 31, s. 47 (1).

APPEAL by the defendant from the judgment of the Appellate Division of the Supreme Court of Alberta (1), affirming the judgment of the trial judge, Ewing J. (2), and maintaining the appellant's action.

The cause of action arose out of a motor accident. The plaintiffs are father and son, the former suing on his own behalf and as next friend of the son, a boy of 19 at the time of the accident. The accident consisted of a collision between a motor car driven by the defendant and a motor-cycle ridden by the infant plaintiff in the mining settlement of Cadomin. The injuries suffered by the plaintiff were serious, resulting in the loss of his right leg. The trial judge found that the defendant was negligent and that the plaintiffs were not guilty of contributory negligence and awarded damages of \$1,673.90 to the father and \$13,950 to the son. The appellate court, Harvey C.J.A. dissenting, held that the evidence warranted the trial judge's findings and dismissed the appellant's appeal. Harvey C.J.A. dissented on the ground that section 47 (1) of *The Vehicles and Highways Act* applied to the circumstances of the case.

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

(1) [1937] 2 W.W.R. 365.

(2) [1937] 1 W.W.R. 719.

On appeal to the Supreme Court of Canada, after hearing the argument of counsel for the appellant and without calling the counsel for the respondent, the Court dismissed the appeal with costs.

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Duff C.J., speaking for the Court, delivered the following oral judgment:

“ It is not necessary, Mr. Maclean, to call on you.

“ As regards the questions of fact, they have been very fully discussed in the course of the very thorough argument which counsel for the appellant has put before us. We think it only necessary to say that there are concurrent findings of fact and we really see no adequate ground for setting these findings aside.

“ As to the statute, our view is that it has no application to the circumstances of this case.

“ The appeal is dismissed with costs.”

Appeal dismissed with costs.

Sydney Wood for the appellants.

N. D. Maclean K.C. for the respondent.
