

1908

TORONTO RAILWAY CO. v. MILLIGAN.

*Dec. 15.

Appeal—Jurisdiction—Amount in controversy—Addition of interest to amount of verdict—Stay of execution.

MOTION to quash an appeal from the decision of the Court of Appeal for Ontario(1), dismissing an appeal from the judgment of a Divisional Court, which affirmed the judgment in favour of the plaintiff entered by Clute J. upon the findings of the jury at the trial.

The action was to recover damages for personal injuries alleged to have been sustained through the negligence of the company in the operation of their tramway. At the trial the jury answered the questions submitted to them favourably to the plaintiff and assessed damages at \$1,000, for which amount judgment was, some time subsequently, entered for the plaintiff. This judgment was affirmed by the judgment from which the appeal was sought. On 24th November, 1908, Maclaren J., in chambers, approved the security offered upon the proposed appeal to the Supreme Court of Canada(2), taking the view that interest from date of judgment on the verdict at the rate of five per cent. per annum, allowed by section 116 of the "Judicature Act," R.S.O. 1897, ch. 51, amounting to \$43.50, should be added to the amount of the judgment and that, consequently, an appeal would lie.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Maclennan and Duff JJ.

(1) 17 Ont. L.R. 530.

(2) 17 Ont. L.R. 370.

G. F. Henderson K.C., in supporting the motion, referred to *City of Ottawa v. Hunter* (1); *Foster v. Emory* (2); *Dufresne v. Guévremont* (3); *Bresnan v. Bisnaw* (4), and cases there cited; *Master's S.C. Prac.*, (3 ed.), p: 48, and cases there cited; *London County Council v. Scheewizik* (5), at page 700; Beale, *Cardinal Rules of Legal Interpretation* (2 ed.), p. 32.

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Chrysler K.C. contra, urged that the judgment on the verdict had been entered long before the decision of the Court of Appeal (6), and contended that the amount of \$1,043.50 was the true amount in controversy on the present appeal. He also applied for a stay of execution to enable the company to apply for special leave to appeal, in case such leave was thought necessary.

The court granted the motion and quashed the appeal with costs, holding that the amount in controversy was, by the judgment appealed from, that at which damages had been assessed by the verdict of the jury and as interest had not been included in nor made part of such judgment it could not be added in order to bring the controversy involved within the amount limited by the "Supreme Court Act" in respect to appeals from the Province of Ontario.

The application for stay of execution was refused.

Appeal quashed with costs.

NOTE.—On a subsequent application to the Court of Appeal for Ontario, special leave to appeal was refused (7).

(1) 31 Can. S.C.R. 7.

(4) *Cout. Cas.* 318.

(2) 14 Ont. P.R. 1.

(5) (1905) 2 K.B. 695.

(3) 26 Can. S.C.R. 216.

(6) 17 Ont. L.R. 530.

(7) 18 Ont. L.R. 109.