

1926
 *Feb. 2.

MARY SIMMONDS (PLAINTIFF) APPELLANT;

AND

CANADIAN NATIONAL RAILWAY }
 COMPANY (DEFENDANT) } RESPONDENT.

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

*Appeal—Jurisdiction—Jury trial—Verdict for plaintiff—Appellate court
 directing new trial—Judicial discretion*

The Supreme Court of Canada should not interfere with the exercise of
 discretion by an appellate court in directing a new trial in an action
 for damages maintained on the verdict of a jury.

MOTION by the respondent for an order quashing the
 appeal on the ground that the judgment appealed from
 having been rendered in the exercise of judicial discretion,
 no appeal lies to the Supreme Court of Canada.

The appellant sued the respondent railway for \$40,000
 damages resulting from an accident at a level crossing, in
 the city of Toronto, when her husband was killed while
 driving a motor car. The jury found a verdict for the
 plaintiff for \$13,904 and judgment was rendered accord-
 ingly. The respondent company appealed to the Appel-
 late Division and that court directed a new trial, stating
 that "we should exercise our discretion and require the
 case to be retried."

The plaintiff appealed from that judgment to this court.

The Supreme Court of Canada, after hearing counsel,
 granted the motion with costs.

Motion granted with costs.

J. P. Pratt for motion.

Campbell contra.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rin-
 fret JJ.