

1928  
 \*Oct. 2.  
 \*Oct. 3.

JACQUES BUREAU (PLAINTIFF) . . . . . APPELLANT;

AND

MILTON CAMPBELL AND W. J. B. }  
 SMITH (DEFENDANTS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

*Appeal—Jurisdiction—Amount in controversy—Action against two defendants for slander—Judgment against each for \$1,500—Judgment set aside and new trial ordered by Court of Appeal—Plaintiff's appeal to Supreme Court of Canada quashed for want of jurisdiction.*

Plaintiff's appeal from the judgment of the Court of Appeal for Saskatchewan ([1928] 2 W.W.R. 535) setting aside the judgment below whereby he recovered \$1,500 against each defendant for damages for slander, and ordering a new trial, was quashed, on the ground that this Court had no jurisdiction, as there were separate judgments against each defendant, and each of those judgments was under the appealable amount.

MOTION by each of the defendants to quash the plaintiff's appeal from the judgment of the Court of Appeal for Saskatchewan (1), on the ground of want of jurisdiction.

The plaintiff sued the defendants, in one and the same action, for damages for alleged slanderous statements made

\*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe, Rinfret, Lamont and Smith JJ.

(1) [1928] 2 W.W.R. 535.

against him, consisting of certain alleged statements by the defendant Smith at a public political meeting, and of certain alleged statements by the defendant Campbell, at the said meeting and afterwards, to the effect that Smith's statements were true and could have been stronger. The plaintiff claimed: damages to be paid by the defendants jointly, \$16,000, and in the alternative, \$8,000 to be paid by each defendant. The defendants each delivered a separate statement of defence.

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The action was tried before Taylor J. with a jury. The jury gave their verdict as follows: "We find for the plaintiff against the defendants and assess the damages as against Smith, \$1,500, and against Campbell, \$1,500"; and the judgment was "that the plaintiff do recover from the defendant Campbell the sum of \$1,500; and that the plaintiff do recover from the defendant Smith the sum of \$1,500"; and "that the defendants do pay to the plaintiff his costs of this action \* \* \*."

The defendants each appealed to the Court of Appeal for Saskatchewan, and by the judgment of that court (1) the judgment below was set aside and a new trial ordered. The formal judgment was, in part, as follows:

Upon motion \* \* \* on behalf of the above named Milton Campbell, defendant (appellant), and upon motion \* \* \* on behalf of the above named W. J. B. Smith, defendant (appellant), both by way of appeal from the judgment [below], upon hearing read \* \* \* and upon hearing what was alleged by counsel \* \* \* for the appellant Campbell, \* \* \* for the appellant Smith, and \* \* \* for the respondent \* \* \*.

1. This Court doth order and adjudge that the said appeals be \* \* \* hereby allowed with costs to be paid by the respondent to the said appellants forthwith after taxation thereof.

2. [Judgment below to be set aside and there to be a new trial, the costs of the former trial to abide the event.]

The plaintiff appealed to the Supreme Court of Canada, asking that the judgments so set aside be restored. The security approved and allowed to be given by the plaintiff in respect of the appeal consisted of two separate bonds of the plaintiff and a surety company, namely: a bond in favour of the defendant Campbell for \$2,526.06, and a bond in favour of the defendant Smith for \$1,053.53. As stated by affidavit on defendants' behalf on the present motions, the said sum of \$2,526.06 covered \$500 as security

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for the costs of the appeal to the Supreme Court of Canada, and \$2,026.06, being the costs, as taxed, of appeal to the Court of Appeal awarded to the defendant Campbell; and the said sum of \$1,053.53 covered \$500 as security for the costs of the appeal to the Supreme Court of Canada, and \$553.53, being the costs, as taxed, of appeal to the Court of Appeal awarded to the defendant Smith.

The defendants moved to quash the appeal for want of jurisdiction.

*C. E. Gregory K.C.* for the defendant Smith.

*W. D. Herridge* for the defendant Campbell.

*S. Clark* for the plaintiff.

The motions were heard on October 2, 1928, and on October 3, 1928, the Court orally gave judgment granting them, being of the opinion that there was no jurisdiction, as there were separate judgments against each defendant, and each of those judgments was under the appealable amount. The appeal was quashed with costs, limited, however, to those of a motion to affirm jurisdiction unsuccessfully made in chambers.

*Motions granted. Appeal quashed.*

Solicitors for the appellant: *Tingley & Malone.*

Solicitor for the respondent Campbell: *G. H. Barr.*

Solicitor for the respondent Smith: *W. P. Cumming.*

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