

Supreme Court of Canada
City of Regina v. Western Trust Co., (1917) 55 S.C.R. 628
Date: 1917-10-15

City of Regina v. The Western Trust Company.

1917: October 12; 1917: October 15.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM THE SUPREME COURT OF SASKATCHEWAN.

Municipal law—Failure of common law action—Abandoned appeal—Application for compensation—Workmen's Compensation Act Sask. Statutes, 1910-1911, c. 9.

APPEAL from the judgment of the Supreme Court of Saskatchewan *in banco*¹, affirming, the court being equally divided, the judgment of Newlands J. at the trial.²

The respondent company, as administrators of the estate of one Thomas Cook, brought an action at law against the defendant (appellant) to recover damages for the death of the said Cook, while in the defendant's employ. The jury brought in a verdict for the plaintiff; but the trial judge reserved his decision on a motion for judgment and subsequently dismissed the action with costs². The plaintiff, after serving a notice of appeal, abandoned his appeal and made an application, before the same trial judge, to have compensation assessed under the "Workmen's Compensation Act." This was granted and the plaintiff was awarded \$2,000 damages.

The principal contentions of the appellant were:

1. That the respondent's right to compensation was conditioned upon the determination in the common law action that the defendant was liable under the Act. 2. That the application for assessment was not

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made immediately after the judgment in the common law action, as required by the Act, and that, the appeal having been abandoned, the respondent lost the right to apply, which the statute gave in case of an unsuccessful appeal. 3. That the appellant's street railway was not a railway within the meaning of the Act.

On appeal to the Supreme Court of Canada, the judgment of the trial judge, as affirmed by the Supreme Court of Saskatchewan, was again affirmed.

Appeal dismissed with costs.

G. F. Blair K.C. for the appellant.

P. M. Anderson for the respondent.

¹ 30 D.L.R. 548; 34 W.L.R. 1125.

² 32 W.L.R. 307.

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