

Held, affirming the judgment of the Court of Appeal (24 O. A. 296, which reversed that of Meredith, C.J. at the trial, 27 O. R. 369), that as it appeared that the foreman knew that the business before the sale had been losing money and could not be kept going without reduction of expenses and salaries; as he had been informed that the contracts with the employees had not been assumed by the purchaser; and as upon his own evidence there was no hiring for any definite period, but merely a temporary arrangement until the purchaser should have time to consider the changes to be made—the foreman had no claim for damages and his action was rightly dismissed.

Where the jurisdiction of the Supreme Court to entertain an appeal is doubtful, the Court may assume jurisdiction when it has been decided that the appeal on the merits must be dismissed. *Braid v. Great Western Railway Co.*, 1 Moo. P. C. N. S. 101 followed.

By 60-61 Vict., c. 34, s. 1, s.-s. (c), no appeal lies from judgments of the Court of Appeal for Ontario unless the amount in controversy in the appeal exceeds \$1,000, and by sub-s. (f), it is the amount demanded and not that recovered which determines the amount in controversy.

Held, per TASCHEREAU, J., that to reconcile these two subsections, par. (f) should probably be read as if it meant the amount demanded upon the appeal. To read it as meaning the amount demanded in the action, which is the construction the court has put upon R.S.C. c. 135, s. 29 (2) relating to appeals from Quebec, would seem to be contrary to the intention of Parliament.

Laberge v. Equitable Ins. Co., 24 S.C.R. 59, distinguished. Appeal dismissed with costs.

Gibbons, Q.C., for appellant. *S. H. Blake*, Q.C. and *Osler*, Q.C., for respondents.

Ontario.]

OSTROM v. SILLS.

[May 14.

Adjoining proprietors of land—Different levels—Injury by surface water—Easement.

Ostrom and Sills were adjoining proprietors of land in the village of Frankfort, Ont., that of Ostrom being situate on a higher level than the other. In 1875 improvements were made to a drain discharging upon the premises of Sills, and a culvert was made connecting with it. In 1887 Sills erected a building on his land, and cut off the wall of the culvert which projected over the line of the street, which resulted in the flow of water through it being stopped and backing up on the land of Ostrom, who brought an action against Sills for the damage caused thereby.

Held, that Sills having the right to cut off the part of the culvert which projected over his land, was not liable to Ostrom for the damage so caused, the remedy of the latter, if he had any, being against the municipality for not properly maintaining the drain. Appeal dismissed with costs.

C. J. Holman and *E. Gus Porter*, for appellants. *Clute*, Q.C., and *Williams*, for respondents.