

Held, affirming the judgment of the Appellate Division (37 Ont. L.R. 344), that the statement in the application "date of expiry 7th Sept." did not override the express provision as to commencement of liability and make the risk attach from noon of 7th June; that there was no liability until the policy was delivered on the 8th of June; and, as the horse died of an illness contracted before such delivery, S. could not recover.

Appeal dismissed with costs.

Sir George C. Gibbons, K.C., for appellant. *G. F. Macdonnell*, for defendant.s.

B. C.]

[Oct. 18, 1916.

TAIT v. BRITISH COLUMBIA ELECTRIC RY. CO.

Appeal—Jurisdiction—Action in County Court—Concurrent jurisdiction with Superior Court—Construction of statute—Supreme Court Act—B.C. Court of Appeal Act—B.C. "County Courts Act"—New trial—Re-hearing.

An action in the County Court in British Columbia to recover \$578, damages for injuries sustained, alleged to have been caused through negligence, was dismissed by the County Court Judge after the evidence for the plaintiff had been put in, the defendants offering no evidence. The plaintiff appealed to have judgment entered in his favour or, alternatively, to have the case remitted to the County Court to have damages assessed, or for such further order as might be deemed proper by the Court of Appeal. The appeal was dismissed and the judgment appealed from affirmed. The British Columbia Court of Appeal Act, R.S.B.C., ch. 51, s. 15, s.s. 3, provides that every appeal shall include a motion for a new trial unless otherwise stated in the notice of appeal. On motion to quash an appeal to the Supreme Court of Canada on the grounds that the notice prescribed by sec. 70 of the Supreme Court Act had not been given within 20 days from the date of the judgment appealed from and that the action was not of the class in which a County Court had concurrent jurisdiction with a superior Court, under sec. 37b of the Supreme Court Act limiting appeals to the Supreme Court of Canada.

Held, Duff, J., dissenting, that no appeal could lie to the Supreme Court of Canada.

Per Fitzpatrick, C.J.:—As the case was not one in which a County Court is given concurrent jurisdiction with a superior Court, under section 40 of the County Courts Act, R.S.B.C. 1911, ch. 53, the Supreme Court of Canada had no jurisdiction