Ogawa v. Fujiwara

[1938] S.C.R. 170

Supreme Court of Canada

1937: February 17.

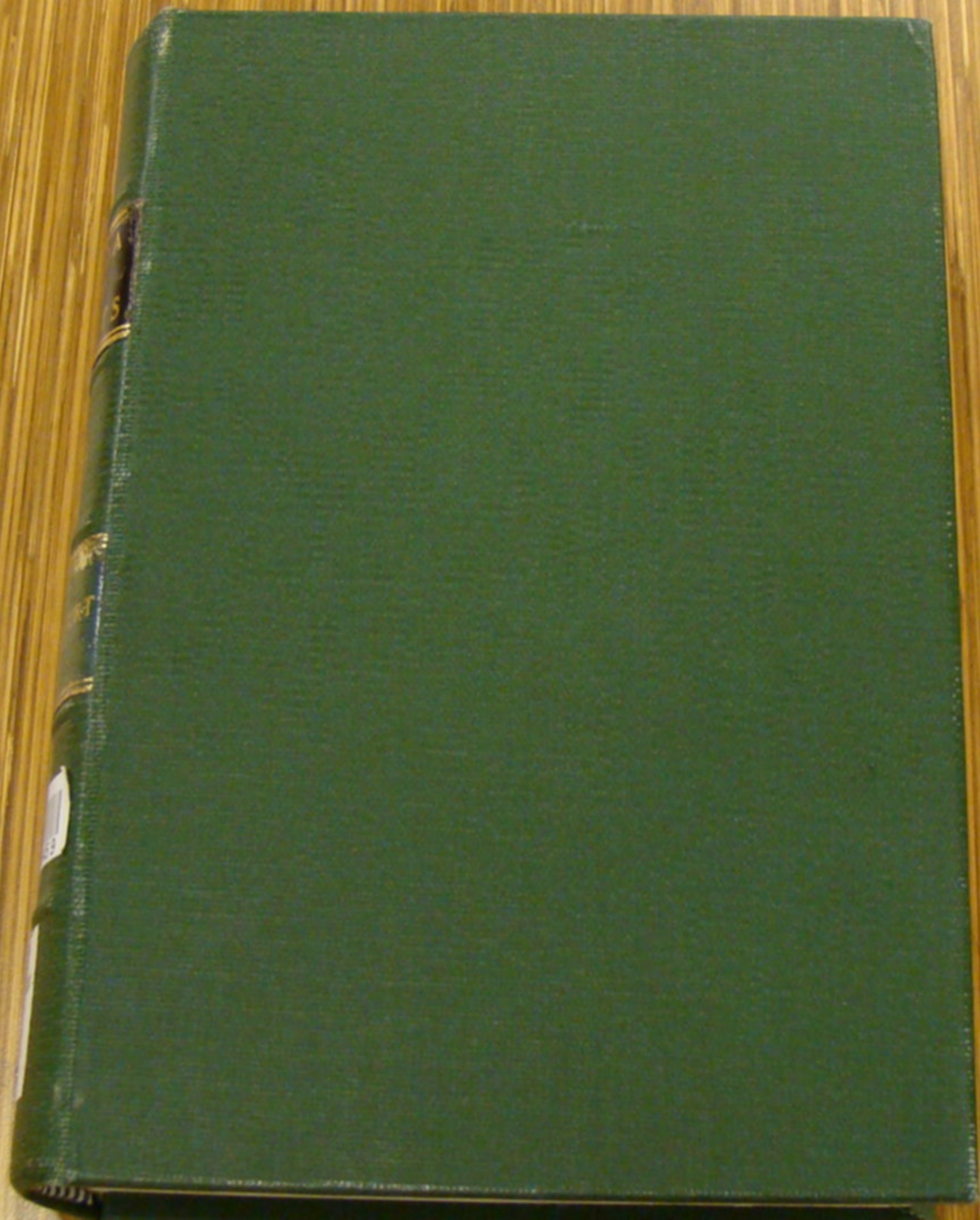
Present: Duff C.J. and Rinfret, Crocket, Kerwin and Hudson JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Alfred Bull K.C., for the appellant.
C.H. Locke K.C., for the respondent.

On the appeal to the Supreme Court of Canada, after hearing the argument of counsel for the appellant, the Court, without calling in counsel for the respondent, delivered judgment orally dismissing the appeal with costs, the Chief Justice, for the Court, stating that there was no reason to disagree with the finding of the trial judge.

Appeal dismissed with costs.



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CANADA LAW REPORTS

Supreme Court of Canada

REPORTERS
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PUBLISHED PURSUANT TO THE STATUTE BY
J. F. SMELLIE, K.C., Registrar of the Court

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JUDGES

OF THE

SUPREME COURT OF CANADA

DURING THE PERIOD OF THESE REPORTS

The Right Hon. Sir LYMAN POORE DUFF C.J., P.C., G.C.M.G.
" THIBAUDEAU RINFRET J.
" LAWRENCE ARTHUR CANNON J.
" OSWALD SMITH CROCKET J.
" HENRY HAGUE DAVIS J.
" PATRICK KERWIN J.
" ALBERT BLELLOCK HUDSON J.

ATTORNEY-GENERAL FOR THE DOMINION OF CANADA:
The Rt. Hon. ERNEST LAPOINTE, K.C.

1937 Foster v. The King. Kerwin J.

of the court, expresses a similar view in somewhat different language.

This judgment does not conflict with that from which it is sought to appeal in the present case as the charge here does not allege or suggest a conspiracy to do anything of the kind referred to in the judgment in the *Sinclair* case. Counsel for the accused objected to the definition of a conspiracy to defraud, given by the trial judge and approved by the Court of King's Bench, but unless they are able to show that in so defining, the Court has decided contrary to a judgment of some other court of appeal in a like case, there is no jurisdiction to grant leave to appeal. The *Sinclair* case (1) was the only one to which they referred as being such a judgment, and for the reasons just stated I am of opinion that that judgment is not one in a like case.

(1) (1906) 12 C.C.C. 20.

The third ground upon which the accused sought leave to appeal was that the case for the defence was not put to the jury. I disposed of this contention at the hearing as it is obvious that the judgment in this case could not upon that point be in conflict with any other court. The position is not that there has been dissent in the court below upon a question of law; and while the principle is well established that the trial judge is to place the defence properly before the jury, and there are many cases exemplifying the rule, the Court of King's Bench, in the present case, has come to the conclusion that this was done.

The application is refused.

Motion refused.

1937 *Feb. 17.

OGAWA *v.* FUJIWARA

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Motor vehicles—Acts in emergencies—Negligent cutting in by defendant—Plaintiff's use of accelerator instead of brake.

APPEAL by the defendant from the judgment of the Court of Appeal for British Columbia (1), affirming the judgment of the trial judge, Manson J. (2), and maintain-

* PRESENT:—Duff C.J. and Rinfret, Crocket, Kerwin and Hudson JJ.

(1) [1937] 3 W.W.R. 670. (2) [1937] 1 W.W.R. 364.

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ing the plaintiffs' action for damages arising out of an automobile accident, the defendant being found negligent in cutting in sharply in front of the plaintiff's car immediately after passing it.

On the appeal to the Supreme Court of Canada, after hearing the argument of counsel for the appellant, the Court, without calling in counsel for the respondent, delivered judgment orally dismissing the appeal with costs, the Chief Justice, for the Court, stating that there was no reason to disagree with the finding of the trial judge.

Appeal dismissed with costs.

Alfred Bull K.C. for the appellant.

C. H. Locke K.C. for the respondent.

1937 *Feb. 16, 17.

H. R. ROSS (DEFENDANT) ....APPELLANT;

AND

THEODORE REOPEL AND LYLA REOPEL (PLAINTIFFS) .... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Motor vehicles—Running down of boy crossing street—Excessive speed—Negligence of boy—Which was ultimate negligence—Findings at trial reversed by appellate court and reinstated by Supreme Court of Canada.

APPEAL by the defendant from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the trial judge, D. A. McDonald J., and maintaining the respondents' action for damages caused by an automobile accident.

The infant plaintiff, a boy ten years old, alighted from the right door of a motor car and going behind the car proceeded to cross the street, an arterial highway, and while doing so was struck by a motor car driven by defendant. The trial judge dismissed the action, finding that defendant was not travelling at an excessive speed and that the real cause of the accident was the boy's own negligence in placing the defendant in a position from

* PRESENT:—Duff C.J. and Rinfret, Crocket, Kerwin and Hudson JJ.

(1) [1937] 3 W.W.R. 471.