

COURT OF APPEAL.

JUNE 28TH, 1912.

BATEMAN v. CO. OF MIDDLESEX.

3 O. W. N. 1541; O. L. R.

Negligence—Physician Answering Hurry Call—Before Dawn—Rig Crashed into Obstruction on Highway — Dr. Hurlled Out and Injured Internally — Absence of Warning—Liability of Municipality—Refusal to Submit to Operation—Reasonableness—Neurasthenia—Varied Expert Evidence—Finding of Fact by Judge—Duty of Appellate-tribunal—Quantum of Damages.

Plaintiff, a physician, was answering a hurry call before dawn when his buggy crashed into an obstruction which had been left on the highway by those engaged in repairing the same. Plaintiff was hurled out and was internally injured. He brought action to recover \$25,000 damages, alleging negligence on the part of defendant municipality. Evidence shewed that no light was placed upon the obstruction as a warning.

RIDDELL, J., *held*, 19 O. W. R. 442; 24 O. L. R. 84; 2 O. W. N. 1328, upon the evidence, that the defendants, the county corporation, were liable in damages for the plaintiff's injuries.

The accident caused a falling of the right kidney, an injury to the right pleura, an infected gall bladder and a milder form of neurasthenia. The most serious matter was the prolapsed kidney, the plaintiff being over fifty-five years of age:—

Held, upon the evidence, that the plaintiff was not called upon to submit for an operation for the kidney.

If a patient refuses to submit to an operation which it is reasonable that he should submit to, the continuance of the malady or injury which such operation would cure is due to his refusal and not to the original cause. Whether such refusal is reasonable or not is a question to be decided upon all the circumstances of the case. If the medical attendant be competent, and no attack be made upon his honesty, it is not unreasonable for the patient to refuse to submit to an operation against the advice of the attendant—which was this case.

Tutton v. Owners of S. S. Majestic, [1909] 2 K. B. 54, specially referred to.

The neurasthenia was as truly an injury as a broken bone.

Judgment for plaintiff for \$12,500 damages and full costs of suit. Divisional Court, 20 O. W. R. 567; 3 O. W. N. 307; 25 O. L. R. 137, dismissed with costs an appeal by the county, from above judgment.

COURT OF APPEAL reduced damages to \$10,000, holding that it was not proven beyond a doubt that the prolapsed kidney was due to the accident in question.

Power of Court to review findings of fact by trial Judge discussed, and *Jones v. Hough*, 5 Exch. D. 115, at p. 122, referred to.

Phillips v. London & S.-W. Rwy. Co., 4 Q. B. D. 406; 5 Q. B. D. 78; 5 C. P. D. 280, and

Church v. Ottawa, 25 O. R. 298; 22 A. R. 348, referred to on question of *quantum* of damages.

Plaintiff given costs of trial, no costs of either appeal to either party.

[See, also, *Bradenburg v. Ottawa*, 14 O. W. R. 318; 19 O. L. R. 34, on question of *quantum* of damages.—*Ed.*]