

order directing the return of the infant to the custody and control of the petitioners by William Corbett and his wife.

W. E. Middleton, for petitioners.

Shirley Denison, for William Corbett and wife.

P. H. Drayton for the infant.

MEREDITH, C.J., held that, under all the circumstances of the case, and in view of a report of the official guardian, the petition should be dismissed with costs. The affidavits and papers, included in the exhibits, must, after the time for appealing from this order has expired, if an appeal is not taken, be sealed up and remain sealed, and be indorsed with a memorandum that they are not to be opened unless by order of the Court or a Judge.

BRITTON, J.

FEBRUARY 17TH, 1903.

TRIAL.

FLETT v. COULTER.

Negligence—Injury to Infant from Kick of Horse—Horse Getting out of Pasture—Reasonable Result—Contributory Negligence of Infant—Nonsuit—Answers of Jury.

Action by Hugh Flett, an infant, and his father, for damages for injuries received by the boy on 12th May, 1902, by the kick of a horse owned by defendant. Certain questions were submitted to the jury, but the Judge reserved for consideration a motion for a nonsuit.

J. G. O'Donoghue, for plaintiffs.

S. B. Woods, for defendant.

BRITTON, J., held that, apart from the question of contributory negligence on the part of the boy, the plaintiffs were not entitled to recover. The horse was a quiet one; there was not a particle of evidence to shew that defendant knew of the horse being accustomed to stray or that he had any vicious propensities; nor was the horse shewn to have had any such fault. Even if the horse got out of the pasture by reason of defective fences, what occurred is not the reasonable result of the horse getting upon the highway. *Patterson v. Fanning*, 2 O. L. R. 462, distinguished. In this case the negligence, if any is proved, is not connected with the damage complained of. The boy fully understood what he was doing and the danger of interfering with the horse. The case was, upon the facts, altogether outside of the cases in which contributory negligence cannot be imputed by reason of tender age. Upon the evidence and upon the answer