

gence of the driver of the defendants' motor-vehicle causing or contributing to the accident? If guilty of any negligence, state fully in what that negligence consisted. A. No.

(5) Was the driver of the motor-cycle, in the car of which Joseph Coop was riding, guilty of any negligence causing or contributing to the accident? A. Yes.

(6) If so, what was that negligence? A. Not stopping or turning out of the way.

(7) If the driver of the motor-cycle was guilty of negligence causing or contributing to the accident, could the driver of the motor-vehicle owned by the defendants (the Simpson company), after he saw or ought to have seen and apprehended the danger, have done anything which would have prevented the accident? A. No.

(8) If so, what could he have done which he neglected to do? (Not answered).

(9) What damages, if any, has the plaintiff suffered, which the defendants (the Simpson company) should pay by reason of the negligence of their driver, if you find that he was guilty of any negligence causing the accident? (Not answered).

The usual questions, "Were the defendants guilty of negligence that caused this accident? If so, what was the negligence?" were not asked.

The jury were not told by the trial Judge in his charge that the plaintiff was entitled to recover notwithstanding the negligence of Lowry unless Joseph Coop in some way himself contributed to the accident. The passenger is not, since *Mills v. Armstrong* (The *Bernina*) (1888), 13 App. Cas. 1, to be identified with the driver.

The case proceeded throughout on the assumption that the negligence of Lowry might affect the plaintiff's right to recover. The jury should have been distinctly told that, unless the deceased was himself guilty of some default amounting to contributory negligence, he was not affected by the fact that Lowry was guilty of negligence that caused the accident; and that they might find the defendants guilty of negligence if Wooton was guilty of any negligence that contributed to the accident, notwithstanding that they found Lowry also guilty of negligence.

Wooton did not sound his horn; the collision took place at an intersection of streets in the central part of the city; and there was evidence that the traffic was heavy at the time. It was for the jury to consider whether the rate of speed, the omission to sound the horn, and the other circumstances, were such as to constitute negligence, notwithstanding that the speed of the motor-truck was less than 15 miles an hour; and their attention should have been directed to sec. 11 (2) of the Motor Vehicles Act.