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No. 13

APPELLATE DIVISION.

SECOND DIVISIONAL COURT. .

JUNE 8TH, 1917.

MITCHELL v. TORONTO AND YORK RADIAL
R.W. CO.

Negligence—Street Railway—Horse being Driven across Track on Highway Struck by Electric Car—Evidence—Findings of Jury—Excessive Speed—Neglect to Give Warning of Approach of Car—Failure to Avoid Running into Horse after Danger of Collision Manifest—Contributory Negligence—Ultimate Negligence.

Appeal by the plaintiff from the judgment of DENTON, Jun. Co. C.J., dismissing an action brought in the County Court of the County of York and tried with a jury.

The action was for damages caused to the plaintiff by his horse being killed and his sleigh and harness injured when struck by a car of the defendants upon the highway. The jury found negligence, but the trial Judge, having reserved judgment on a motion for a nonsuit, before leaving questions to the jury, afterwards held that there was no evidence of negligence for the jury, and dismissed the action.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

W. Shapley, for the appellant.

J. H. Moss, K.C., for the defendants, respondents.

MEREDITH, C.J.C.P., read a judgment in which he said that the Court had to consider whether there was or was not any evidence upon which reasonable men could find for the appellant. The facts were simple, and there was no conflict of testimony.