

The defendant who had been informed of the juryman's visit to the premises in the morning told his co-defendant of the fact, but the matter was not mentioned to the counsel or solicitor for the defendants, or the plaintiff, and it did not become known until some days after the trial, when the defendant told his solicitor about it as a reason why a new trial should be applied for.

E. J. Reynolds, for the defendants, now moved for a new trial, and to set aside findings and verdict, alleging as the ground improper conduct of the juryman in viewing the premises by himself during the progress of the trial, citing *Regina v. Petrie*, 20 O.R. 317; *Widder v. Buffalo & Lake Huron R.W. Co.*, 24 U.C.R. 520; *Tiffany v. McNee*, 24 O.R. 551.

Hutcheson, for the plaintiff: The defendants cannot succeed, as they held back the information given to them, running their chance of a favourable verdict; and they cannot now avail themselves of the alleged impropriety. If the conduct of this juryman was improper, he had a so much fuller view subsequently with the other jurymen that any wrong impression must have been removed. The question of convenience and expense of another trial, etc., should be considered: *Widder v. Buffalo & Lake Huron R.W. Co.*, ante, and *Campbell v. Jackson*, 29 C.L.J. 69.

MCDONALD, C.O.J.: The facts set forth in the cases of *Widder v. Buffalo & Lake Huron R.W. Co.* and *Tiffany v. McNee* are different from those in this case, but on one point they are on all-fours with it, viz., that the parties claiming to have been injured, with full knowledge of the facts, took their chance of succeeding, and allowed the case to go to the jury. Having been unsuccessful, they cannot now be permitted to urge the objection. If it be said that, not being professional men, they were not aware of the probable effects of the juryman's action, the answer may properly be made that they were sufficiently aware of it to go to their solicitor after the trial and inform him of it as a ground upon which the verdict could be attacked. The plaintiff's motion is denied with costs; and the verdict, judgment, and subsequent proceedings must stand.

Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From Co. Ct. York.]

[March 5.]

DUTHIE & ESSERY.

Bills of exchange and promissory notes—Endorsement by stranger—53 Vict., c. 53, ss. 56 and 58 (1.).

Where promissory notes payable to named payees were endorsed by the defendant before delivery to them, he was held liable to them in an action on the notes.

Judgment of the County Court of York reversed.

Shilton for the appellant.

Keith for the respondent.