

An appeal by the plaintiff from a judgment of HON. MR. JUSTICE BRITTON awarding plaintiff \$300 damages resulting from injuries caused by the negligence of defendant's servant in operating an automobile.

The appeal was for a new trial or to vary the judgment by increasing the damages.

The defendant did not appeal against the finding of negligence so that the sole question for consideration was one of damages.

See 20 O. W. R. 545, 773; 3 O. W. N. 337, 439.

The appeal to Divisional Court was heard by HON. SIR WM. MEREDITH, C.J.C.P., HON. MR. JUSTICE TEETZEL and HON. MR. JUSTICE KELLY.

J. W. McCullough, for the plaintiff, appellant.

W. G. Thurston, K.C., for the defendant, respondent.

HON. MR. JUSTICE TEETZEL:—The collision in which the plaintiff was injured occurred on May 24th, 1911; the plaintiff was thrown or pulled from his rig and sustained several minor bruises and suffered considerable pain and distress in his chest and sides, but did not consult his physician until May 31st. On that date the physician says: "he was in quite a nervous condition. . . . In the examining I found that his nervous system seemed to be under a bit of shock, and it seemed to disarrange his system sufficient to require some little help." The pain and distress continued to increase, and on the 10th June acute pneumonia, accompanied with pleurisy, developed. The learned Judge accepting the evidence of two experts found that this condition resulted from the injuries caused by the negligence found against the defendant.

The plaintiff was confined to his bed between three and four weeks, and was for a long time afterwards very weak and unable to do any heavy work. His physician examined him on September 12th, and says at that time: "his heart was displaced to the right about an inch from this pleural effusion in the pleural sac. It was very irregular and very rapid, and his nervous condition was very bad: he was extremely nervous."

On the 14th November his physician again examined him and found him very much improved, but says: "he had not regained his usual vigour; he was still weak."