DIVISIONAL COURT. SEPTEMBER 30TH, 1912.

REIFFENSTEIN v. DEY.

Trial—Jury—Unsatisfactory Findings—New Trial without a Jury Directed by Court.

Motion by the plaintiff for a new trial, or for judgment in the plaintiff's favour, after trial before RIDDELL, J., and a jury, at Ottawa, and judgment dismissing the action.

The action was brought by two ladies to recover damages for injuries sustained as the result of a running-down accident, occasioned, it was said, by the negligence of the defendant.

The motion was heard by BOYD, C., MIDDLETON and LATCHFORD, JJ.

G. F. Henderson, K.C., for the plaintiffs.

A. E. Fripp, K.C., for the defendant.

MIDDLETON, J.:—The jury have answered in the defendant's favour all the questions submitted by the trial Judge; and, in ordinary circumstances, their decision would be final. But upon some of the questions it is clear that the answers of the jury are not warranted by any possible view of the evidence. Upon other questions there was evidence from which the findings might well be in the defendant's favour.

After careful and anxious consideration, we have come to the conclusion that the answers of the jury to some of the questions are so entirely against the evidence that it is apparent that for some reason the jury must have given effect to some improper consideration, or have acted unreasonably, and that there has not been a fair and impartial trial. We have spoken to the learned trial Judge, and he agrees with us that the result must be regarded as unsatisfactory.

In view of the fact that the case had already been tried before Mr. Justice Britton—when the jury disagreed—and of the fact that the jury notice was given by the plaintiff, and the plaintiff now desires trial without a jury, we think it proper to direct a new trial before a Judge without a jury.

We are much impressed by the view that a new trial ought not lightly to be given; but in this case the danger of a miscarriage of justice, if the present verdict is allowed to stand, appears so great that we think this case may be treated as exceptional.