

their answers, were as follows: (1) Were the injuries of the plaintiff caused by the negligence of the defendants? A. Yes. (2) If so, wherein did such negligence consist? A. In not seeing that the valve was properly closed? (3) Or were the plaintiff's injuries the result of his own negligence? A. No. (4) If so, wherein did such negligence consist? (Not answered.) (5) Could the plaintiff, by the exercise of reasonable care, have avoided the accident? A. Yes. (6) If so, what could he have done? A. By examining valve. The damages were assessed at \$2,200.

The trial Judge, SUTHERLAND, J., thought the answers conflicting, and left the case for a new trial: Rule 501(1).

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. E. Rose, K.C., for the appellants.

A. A. Ingram, for the plaintiff, respondent.

FALCONBRIDGE, C.J.K.B., said that, in his opinion, there was evidence proper to be submitted to the jury on all branches of the case. The answers of the jury were plainly conflicting; and the case was one for the application of Rule 501(1), as the trial Judge ruled. The appeal should, therefore, be dismissed with costs.

LATCHFORD, J., was of the same opinion, for reasons stated in writing, in which he referred to *St. Denis v. Baxter* (1887-8), 13 O.R. 41, 15 A.R. 387; *Kerry v. England*, [1898] A.C. 742; *Australasian Steam Navigation Co. v. Smith & Sons* (1889), 14 App. Cas. 321.

KELLY, J., was of the same opinion, for reasons stated in writing.

RIDDELL, J., was of opinion, for reasons stated in writing, that the very highest position in which the answers of the jury could be put in favour of the plaintiff was to read them as though the jury said: "We find that this accident was caused by the negligence of the defendants, and it could have been avoided by the plaintiff exercising reasonable care—but we do not call the omission to use that reasonable care negligence on the part of the plaintiff." The appeal should be allowed and the action dismissed.

Appeal dismissed; RIDDELL, J., dissenting.