

CLUTE, J.

APRIL 21st, 1917.

KERR v. TOWNSEND.

THOMPSON v. TOWNSEND.

*Negligence—Collision of Vehicles on Highway—Excessive and Illegal Speed—Failure to Slow down at Intersection of Highways—Contributory Negligence—Ultimate Negligence—Damages.*

Actions for damages for injuries sustained by the plaintiffs by reason of a collision of the cart of the plaintiff Kerr, in which he and the plaintiff Thompson were seated, with the automobile of the defendant, at the intersection of Wilton avenue and Victoria street, in the city of Toronto, on the 20th November, 1915—the plaintiffs alleging negligence on the part of the defendant or his servant.

The actions were tried together, without a jury, at Toronto.

D. L. Sinclair, for the plaintiffs.

H. A. Newman, for the defendant.

CLUTE, J., in a written judgment, said that about 6.45 p.m. the plaintiffs were proceeding westerly along Wilton avenue, on the north side, and had reached a point about 4 or 5 feet east of the east limit of Victoria street, when the plaintiff Kerr observed two automobiles abreast coming along Victoria street on the east side, about 80 to 100 feet south of Wilton avenue. Thinking that the automobiles would slow down as they approached the crossing, Kerr drove on at a jog-trot. The chauffeur of the defendant's car said that he saw a "rig" approaching the crossing when about 80 feet away, and thought that he could "shoot" in front of the "rig" and pass it on the west side, going north. This he attempted to do, increasing his speed to from 25 to 30 miles an hour, as he said; but he was not able to avoid a collision, and struck the horse on his front part with such force that the shafts were broken off and the horse was carried or thrown a distance of more than 50 feet, the cart turning over, but remaining where it was.

The defendant contended that his car had the right of way, and the plaintiff was in fault in crossing in front of it. At the moment of collision, the horse was on the west side of the centre of Victoria street, and the waggon about east of the centre line.