

[References to the evidence and the trial Judge's charge.]

The issue was not whether the defendant company carried on the business of letting taxicabs for immoral purposes, but whether its chauffeur, when in charge of one of its taxicabs, had by negligence caused the accident. Much of the evidence . . . was not pertinent to the issue. To intimate to a jury that the defendant company hired out its taxicabs for immoral purposes as "travelling brothels" would in all probability create a prejudice in their minds against the defendant company; and, considering the prominence given to the supposed character of the women and the object of the parties in the two vehicles, I doubt if that prejudice was removed by the learned Judge's instructions to them not to consider the suggested purposes of the defendant company in letting out its taxicabs.

Further, while perhaps all the women in the car and the taxicab may have belonged to the same unfortunate class, still the jury (and juries are not always logical), with their attention frequently and pointedly called to the apparently immoral purposes of the two parties in those vehicles, may have been more prejudiced against the defendant company, whose taxicab was in use with its consent, than against the plaintiff, whose car was being used without his consent. In the weighing of the conflicting evidence, the prejudice thus aroused may have been thrown into the scale and turned it against the defendant company.

Under the circumstances, it appears to me that the trial has not been satisfactory, and that the defendant company has reasonable grounds for questioning its fairness; and, therefore, the Court, in the exercise of its discretion, should set aside the judgment and direct a new trial.

The costs of the former trial and of this appeal to be costs in the cause.

JUNE 15TH, 1914.

\*WILLSON v. THOMSON.

*Mortgage—Action to Enforce by Foreclosure—Covenant for Payment—Part of Mortgage-moneys not Payable till Majority of Person Interested in Land—Effect as to Remedies of Mortgagee—Provisoes—Construction.*

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., 5 O.W.N. 815.

\*To be reported in the Ontario Law Reports.