

TEETZEL, J.—The jury were not instructed as to any difference between nervous shock and mental shock, the words “nervous” and “mental” having been used throughout the trial as interchangeable epithets. Upon the evidence, I think it would have been more correct to have used the expression “nervous shock” in the questions submitted; but in dealing with the questions I think it is manifest that the jury, in assessing damages for mental shock and allowing no damages for shock caused by blows, had regard to the absence of any physical injury caused by the collision, and that the damages were assessed for the loss of time, inability to work, sleeplessness, and other discomforts suffered by plaintiffs as a consequence of the shock to their nervous systems attributable to the fright at the time of the collision. . . .

[Reference to and discussion of *Victorian Railway Commissioners v. Coultas*, 13 App. Cas. 222; *Henderson v. Canada Atlantic R. W. Co.*, 25 A. R. 437; *Dulieu v. White*, [1901] 2 K. B. 669.]

It seems to me that the principle relied upon by defendants . . . must be limited to cases where there has been no physical impact, and that this case is distinguishable by the fact that here there was physical impact through the negligence of defendants, and the impact was under such conditions that it was reasonable and natural that plaintiffs would suffer in consequence thereof great nervous or mental shock.

They were rightfully travelling on a highway in an enclosed vehicle, when, without warning, their vehicle was suddenly struck by a moving car of defendants, pushed a short distance sideways, and impinged upon the end of another car. The unexpected collision, the crashing of the broken vehicle, and the imminent peril to plaintiffs of being killed or seriously injured, were just such conditions as would naturally cause them to be seized with sudden terror. . . .

There is the sequence of impact causing nervous shock which in turn causes the injuries complained of; as put by Kennedy, J., in *Dulieu v. White*, *supra*, “natural and continuous sequence uninterruptedly connecting the breach of duty with the damage, as cause and effect.”

I therefore think that the finding as to remoteness of this character of damage in the *Victorian Railway* case cannot be held to apply where there has been direct physical impact through the negligence of defendants. The judgment in that case left entirely untouched the question of impact, or what its effect would have been in determining the question of remoteness, and for that reason . . . I think this case is distinguishable, and not governed by the *Victorian Railway*