

damages for injuries sustained by the plaintiffs by reason of the defendants leaving their horses unattended upon a highway so that they ran away and ran into the waggon in which the plaintiffs were seated, and so injured them. The case was tried without a jury, and the trial Judge found that there was no negligence on the part of the defendants.

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

F. H. Thompson, K.C., for the plaintiffs.

J. M. Best, for the defendants.

FALCONBRIDGE, C.J.:—It appears to me that unless we can say that what defendant Ernest McIntosh did, or failed to do, here was negligence per se, this judgment cannot be disturbed. If there had been a jury, could they have been directed to find one way or the other? Surely not. The case must have been submitted to them, and if they had found in favour of the defendants, could we say that they were wrong? Here a Judge of great practical experience has found that the defendant was not guilty of negligence. His opinion ought to be treated with some deference. His finding is not based on misapprehension of any fact or facts, as was pointed out in *Beal v. Michigan Central R. R. Co.*, 19 O. L. R. 502, at p. 506. Here the facts are clear, were not in dispute, and were fully grasped and apprehended by the trial Judge.

I think, therefore, on principle, that we ought not to interfere, unless we thought he was clearly wrong; but I am also of opinion that the learned Judge has come to the right conclusion.

The appeal must be dismissed, with the usual penalty of costs.

RIDDELL, J., agreed. He referred to and distinguished the case of *Illidge v. Goodwin*, 5 C. & P. 190, 192. He also referred to *Myers v. Sault Ste. Marie Paper and Pulp Co.*, 3 O. L. R. 600, 33 S. C. R. 23; *Clark v. Chambers*, 3 Q. B. D. 327; *Lynch v. Nurdin* (1841), 1 Q. B. 29; *Engelhart v. Farrant*, [1897] 1 Q. B. 240; *Melbourne Tramway Co. v. Spencer*, 14 Vict. L. R. 95; *Beven on Negligence*, Can. ed., p. 545; *Chase v. McDonald*, 25 C. P. 129; *Walton v. London Brighton and South Coast R. W. Co.*, 1 H. & R. 424, 14 W. R. 395; *Sullivan v. McWilliam*, 20 A. R. 627; *Mann v. Ward*, 8 Times L. R. 699; *Frazer v. Vemler*, 9 N. Y. 514; *Wasmer v. Delaware Lackawanna and Western R. R. Co.*, 80 N. Y. 212; *Wasmith v. Butler*, 93 N. Y. 1; *McMahon v. Kelly*, 9 N. Y. Supp. 544; *Dickson v. McCoy*, 39 N. Y. 400; *Griggs v. Flukenstein*, 14 Minn. 81; *Park v. O'Brien*, 23 Conn. 339.