

SECOND DIVISIONAL COURT

MARCH 25TH, 1918.

*COOP v. ROBERT SIMPSON CO.

Negligence—Collision of Motor-vehicles in Highway—Passenger in one Killed—Action against Owner of other by Widow of Man Killed—Findings of Jury—Identification of Driver with Passenger—Judge's Charge—Nondirection—Criminal Trial at same Sittings—Contributory Negligence—Motor Vehicles Act—New Trial.

Appeal by the plaintiff (the widow of Joseph Coop) from the judgment of HODGINS, J.A., at the trial, upon the findings of a jury, dismissing without costs an action, under the Fatal Accidents Act, to recover damages for the death of Joseph Coop, who was killed in a collision between a motor-truck of the defendants driven by one Wooton, and a motor-cycle owned and driven by one Lowry, in the side-car of which the deceased was sitting when the collision occurred, upon a street in the city of Toronto. The plaintiff alleged negligence on the part of the driver of the motor-truck.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

W. A. Skeans, for the appellant.

Peter White, K.C., and H. S. Sprague, for the defendants, respondents.

CLUTE, J., in a written judgment, said that the motor-truck had the right of way, and the collision was undoubtedly caused by the driver of the motor-cycle disregarding this fact.

The following were the questions put to the jury and their answers:—

(1) Was the death of Joseph Coop caused by reason of a motor-vehicle on a highway? A. Yes.

(2) If so, who was the owner and who was the driver of the motor-vehicle? A. Lowry.

(3) If the defendants (the Simpson company) were the owners of a motor-vehicle upon a highway at the time of the death of Joseph Coop, which you find caused his death, has the evidence given in this case satisfied you that his death was not caused by the negligence or improper conduct of the driver of their motor-vehicle? A. Yes.

(4) If not so satisfied, was the accident caused by the negli-