

the debt and an agreement not to rank for the balance amounts to compounding, as I think it does (see per Pollock, C.B., in *Union Bank of Manchester v. Beech*, 3 H. & C. 672, at p. 676; *Perry v. National Provincial Bank of England*, [1910] 1 Ch. 464); then the sureties have agreed that the discharge of the principal debtor, if effected, shall not affect their liability on the guaranty.

I think that the judgment appealed from should be reversed, and that the order of the Local Master should be restored.

APRIL 7TH, 1913.

*REIFFENSTEIN v. DEY.

Trial—Jury—Unsatisfactory Findings—Negligence—Contributory Negligence—New Trial—Rule as to Setting aside Verdicts of Juries—Reversal of Direction to Dispense with Jury.

Appeal by the defendant from the order of a Divisional Court, ante 78, setting aside the judgment of RIDDELL, J., upon the findings of a jury at the trial at Ottawa, in favour of the defendant, and directing a new trial without a jury.

The action was brought to recover damages for injuries sustained by the plaintiffs by being run down by a horse and carriage driven by a son and agent of the defendant.

The jury found the issues as to negligence and contributory negligence in favour of the defendant.

The Divisional Court came to the conclusion that the answers of the jury to the questions put to them were so entirely against the evidence that it was apparent that for some reason the jury must have given effect to some improper consideration or have acted unreasonably, and that there had not been a fair and impartial trial.

The appeal from the order of the Divisional Court was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A., and BRITTON, J.

A. E. Fripp, K.C., for the defendant.

G. F. Henderson, K.C., for the plaintiffs.

*To be reported in the Ontario Law Reports.