

OCTOBER 30TH, 1909.

PAQUETTE v. RIDEAU SKATING CLUB.

New Trial—Verdict for Defendants—Setting aside—Restoration by Court of Appeal — Negligence — Evidence—Question for Jury.

Appeal by the defendants from an order of a Divisional Court setting aside the judgment of ANGLIN, J., at the trial, upon the findings of a jury, in favour of the defendants, and directing a new trial. The action was brought by the widow and administratrix of Alphonse Paquette to recover damages for his death from injury sustained by him when repairing an electric light in the defendants' rink, by reason (as alleged) of a boy skating against the ladder on which the deceased was standing.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

G. F. Shepley, K.C., and W. Green, for the defendants.

W. Nesbitt, K.C., and M. Lockhart Gordon, for the plaintiff.

OSLER, J.A.:—No proper ground was shewn for granting a new trial. It may be conceded that there was some evidence of negligence, and that, if the jury had found for the plaintiff, their verdict could not have been disturbed. But the question was, on the evidence and charge, wholly one of fact. The charge was not objected to in any particular dealing with the legal position of the defendants in respect of their duty to persons lawfully on their property, and it was open to the jury to find that, under all the circumstances disclosed, the defendants were not negligent in omitting to keep the two intruding skaters off the rink. That is the view they took of the evidence. Why should their finding be disturbed? Was it perverse or unreasonable? I think not. It seems to me the ordinary case of evidence warranting a verdict either way; surely the unsuccessful party must in such a case be able to point to something like a mistrial or perverse or unwarrantable conduct on the part of the jury, in order to attack a verdict for his opponent: *Metropolitan R. W. Co. v. Wright*, 11 App. Cas. 152, 156; *Cox v. English, etc., Bank*, [1905] A. C. 158; *Toronto R. W. Co. v. King*, [1908] A. C. 260.

Appeal allowed and judgment dismissing the action restored.

MOSS, C.J.O., GARROW, MACLAREN, and MEREDITH, JJ.A., concurred; MEREDITH, J.A., stating reasons in writing.