

HICKEY v. GANNON.

Responsibility—Stud horse—Mare—False penetration—Damages—Presumption of negligence—Onus probandi—C. C., art. 1055.

The owner of a stud horse on hire is responsible for the death of a mare on account of the stallion's false penetration. The presumption of negligence is against the owner of the horse and the *onus probandi* is against him to rebut this presumption.

The judgment of the Superior Court for the district of Ottawa, was rendered by Mr. Justice Chauvin, on May 4, 1914. It is reversed.

Action in damages by the owner of a mare for the death following her covering by the defendant's stallion. The cause of the accident was false penetration "erreur de voie." The plaintiff alleges the fault and negligence of the defendant and claims \$231 the value of the mare.

The defendant pleads that he took all the usual care and precautions and denies all responsibility.

The Superior Court dismissed the action on the grounds that two veterinary surgeons have declared that the cause of the death of the mare could be ascertained only by an examination *post mortem*; and that the defendant was not guilty of any negligence.

Mr. Justice Archibald, Acting Chief Justice, Saint-Pierre, and Bruneau, JJ.—Court of Review.—No. 3562.—Montreal, June 19, 1915.—L. A. Leduc, attorney for plaintiff.—Wright, Gramble, and Smart, attorneys for defendant.