

The plaintiff appeals from this judgment, on the ground that on the answers of the jury the plaintiff was entitled to judgment for \$100 and costs; and, secondly, that the jury's finding of contributory negligence by the plaintiff is wholly unsupported by the evidence and against the law and the facts.

The dog in question was an Airedale with a very good pedigree. The plaintiff had owned him about nine or ten months at the time of the accident, and he was a little over four months old at the time he bought him.

The plaintiff was driving along Danforth avenue in a waggon drawn by one horse, and the dog was following him about 100 or 150 ft. behind. The plaintiff says that when the car was 50 ft. behind the dog, he (the plaintiff) made some effort to signal, and shouted to the driver of the car to stop, but that the motorman came on and killed the dog.

I think that there is evidence to sustain the findings of the jury, and the only question is whether the answer to question 4 as to the plaintiff's negligence is sufficient to disentitle him to succeed. I am of the opinion that, apart from the provisions of the by-law, allowing his valuable "pup"—as the plaintiff calls him—to follow him on a street car track at a distance of 100 ft. or more, was, in itself, such an act of negligence as to justify the entering of the verdict in favour of the defendant.

It is to be observed also that the negligence of the motorman, as found by the jury, is "in not seeing the danger until too late," and it seems to me that it would be placing too great a burden upon a motorman to hold that he was obliged in law to "see the danger" so as to stop his car to avoid running over a dog, whether he was a highly pedigreed animal or only a common and ordinary dog. Most dogs in Toronto know enough to get out of the way of a street railway car, and if this particular dog had not enough sense for that, his owner should have been—rather than the motorman—aware of the dog's want of sagacity, and should have had him, as the jury say, "in proper control while on the street."

I think, therefore, that the appeal fails and must be dismissed with costs.

RIDDELL and LATCHFORD, JJ., concurred.

KELLY, J., agreed in the result, for reasons stated in writing.

Appeal dismissed.