

place of meeting, was for a time not looking ahead, but was looking down at his machine, and it was during that time that his machine apparently swerved diagonally across the road. He, however, did finally look up, and, when he did, saw the defendant's approach, when they were about at least 150 feet apart. He never regained his proper side of the road, and, in his effort to escape from his dangerous position, finally overturned his machine, and, while in that position, came in contact with the defendant's motor-car, and was severely injured.

The plaintiff deposed that he was proceeding on his own proper side when he saw the defendant approaching, and that the defendant was on the wrong side. At about twenty-five feet apart, the plaintiff said, the defendant seemed to be reducing his speed, and the plaintiff then turned to the left (his wrong side) going towards the north-east, because there did not seem room enough on the proper or south side to pass. He proceeded eight or ten feet in that direction, "and I lost control of my machine, because she tilted . . . to the south towards the automobile which was coming . . . I was about half way off my machine when the automobile hit me."

He had therefore, apparently, on his own shewing, quite crossed from the south side (his proper side while proceeding, as he was, toward the east), and was upon the north side when his machine tilted him towards the defendant's machine.

The jury did not apparently accept the plaintiff's account of his position, and it was quite contrary to the weight of the evidence. The evidence really left no room for doubt, and was practically uncontradicted, that he was for a time not attending to the guidance of his machine, during which time he had deviated from his proper course upon the highway, thus inviting the collision which followed.

There was no reasonable evidence, proper for the jury, of negligence, either primary or ultimate, on the part of the defendant, and the action should have been dismissed at the trial.

That should now be done, and the appeal allowed, both with costs.

*Appeal allowed.*