

The evidence of Rigney was fully corroborated by the affidavits of the subscribing witnesses to the will, and also by the oral testimony of witnesses in the Surrogate Court, and before me except in the evidence of Jas. T. Delaney.

This witness says his statement in the Surrogate Court was not a true statement, and could I accept his evidence as true, I would be obliged to decide against the will—considering Delaney's demeanour in the box—having regard to the affidavit he made, the evidence he gave before the Surrogate Judge, his contradiction by himself and by the other witnesses I cannot accept as true what Delaney said before me.

Upon the whole case, the attack upon the will fails. It was a proper case for a caveat—and to ask that the will be proved in solemn form of law. When that was done the plaintiff desiring to go farther could not expect to do so and have her costs borne by the estate should she fail. I do not impute to the plaintiff any understanding with the witness Delaney by reason of which Delaney has given a false statement as I think he has. Not knowing what to do in the face of the changed attitude of Delaney she went on with her action, and had Delaney in Court. She has failed and the most that under the authorities can be done, is to relieve her from paying defendants' costs. This I will do, and the action will be dismissed without costs.

Twenty days' stay.

DIVISIONAL COURT.

JUNE 28TH, 1912.

VAN HORN v. VERRALL.

3 O. W. N. 1567.

Damages — Personal Injuries — Negligence — Elements of Damage — Pecuniary Loss — Pain and Suffering — Increase on Appeal of Damages Awarded by Trial Judge.

Action for damages for injuries sustained by alleged negligence of defendant's servant in operating an automobile.

BRITTON, J., awarded plaintiff \$300 damages and costs.

DIVISIONAL COURT on appeal by plaintiff held that the damages awarded would only compensate for actual pecuniary loss and that plaintiff was entitled in addition to damages for the pain and suffering incurred.

Rowley v. London & North-Western Rv. Co., L. R. 8 Ex. 221, and *Phillips v. South-Western Rv. Co.*, 4 Q. B. D. 406, and 5 Q. B. D. 78, referred to.

Judgment below varied by increasing damages from \$300 to \$700. Costs of trial and appeal to plaintiff.