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No. 4

SUPREME COURT OF CANADA.

DECEMBER 23RD, 1918.

JUDSON v. HAINES.

Negligence—Collision of Motor-vehicles in Highway—Proof of Negligence—Onus—Evidence—Motor Vehicles Act, sec. 23—Judge's Charge—Findings of Jury—Ultimate Negligence—New Trial.

Appeal by the plaintiff from the judgment of a Divisional Court of the Appellate Division of the Supreme Court of Ontario dismissing the plaintiff's appeal from the judgment at the trial, upon the findings of a jury, dismissing the action: Judson v. Haines (1918), 42 O.L.R. 629, 14 O.W.N. 131.

The appeal was heard by DAVIES, C.J.C., IDINGTON, ANGLIN, BRODEUR, and MIGNAULT, JJ.

J. P. MacGregor, for the appellant.

W. N. Tilley, K.C., and G. W. Mason, for the defendant, respondent.

ANGLIN, J., read a judgment in which he said that, apart from any presumptions to which sec. 23 of the Motor Vehicles Act, R.S.O. 1914 ch. 207, might give rise, there was evidence on which a jury might find that negligence or fault on the part of the defendant contributed to cause the collision. Moreover, this was not one of the very rare jury cases in which an issue of contributory negligence could properly be disposed of by the trial Judge. Unless, therefore, the findings of the jury justified the judgment of dismissal entered by the learned trial Judge, and sustained by a majority of the Divisional Court, or were so clearly in the plaintiff's favour as to warrant not merely the setting aside of that judgment, but the entry of judgment for the plaintiff, a new trial seemed inevitable.