

for damages for personal injuries to the plaintiff, upon a street in the city of Toronto, by reason, as he alleged, of the defendant's servant, driving the defendant's horse and carriage, negligently running into the plaintiff and causing the injury.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, J.J.A.

I. F. Hellmuth, K.C., for the defendant.

N. F. Davidson, K.C., for the plaintiff.

The judgment of the Court was delivered by MEREDITH, J.A.:—  
This case is one in which, upon the evidence, reasonable men might find that the plaintiff's injury arose from his own negligence, or from the negligence of the defendant's groom, or that it happened without negligence being reasonably attributable to either of them—just one of those accidents which will happen, and for which no one can be properly adjudged liable, so long as nothing more than ordinary care is exercised, and no more than that is imposed as the legal duty, towards one another, of those making a lawful use of the highways.

The case was not put to the jury thus; but they were impressed with the view of the learned Judge that it depended upon the accuracy of the testimony of the witnesses on the one side or the other, which testimony was referred to in a manner that gave the plaintiff much hopeful satisfaction with corresponding depression on the other side.

There were, however, no objections of a substantial character, in these respects, made to the charge; and the jury found for the plaintiff upon evidence which could not have been properly withdrawn from them.

The finding of the jury was, substantially, that, when the plaintiff was in such a position that it was dangerous to him to do so, the groom whipped the horse, accelerating its speed, so as to cause the collision; and that he was negligent in doing so, because he ought to have seen the plaintiff, and, foreseeing the result, have abstained from accelerating the speed until the plaintiff had passed on.

The finding is contrary to a good deal of the testimony, but is in accord with some of it; and the weight of the evidence was a question for the jury.

There is, therefore, no proper means of interfering with the verdict, whether it does or does not commend itself to one's mind.

Appeal dismissed with costs.