

charged; but there was no reason why he should have assumed that the plaintiff would go on without applying his brake, even at the last moment, and would not slow up sufficiently to allow the defendant's car to pass in front of him.

The plaintiff's negligence was beyond doubt; and there was no reasonable evidence to go to the jury that McIlroy failed to exercise reasonable care to avoid the consequences of the plaintiff's negligence in bringing about the collision.

The appeal should be allowed and the action dismissed, both with costs.

FIRST DIVISIONAL COURT.

MAY 5TH, 1916.

*ROURKE v. HALFORD.

Lunatic—Order Declaring Lunacy—Partial Recovery—Declaration not Superseded—Moneys Paid out by Committee as Gifts to Relatives upon Order of Lunatic—Proof of Recovery of Sanity—Evidence—Onus—Gifts Declared Void—Liability of Estate of Committee to Account—Indemnity.

Appeal by the defendants from the judgment of LENNOX, J., 9 O.W.N. 347.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

M. K. Cowan, K.C., for the defendants J. R. Rourke and Mary McBride, appellants.

J. H. Rodd, for the defendant Christine Halford, executrix of the committee, appellant.

F. D. Davis, for the plaintiffs, executors of the deceased lunatic, respondents.

GARROW, J.A., read a judgment in which, after stating the facts, he said that the plaintiffs, the executors of James Rourke, deceased, sought to recover the moneys paid to the defendants J. R. Rourke and Mary McBride, upon two grounds: (1) that James Rourke, while the order declaring him a lunatic remained unrevoked and the committee undischarged, was in law incapable of dealing with his estate; and (2) that, in any event and apart from the order declaring him a lunatic, James was, when the alleged gifts were made, of unsound mind.

*This case and all others so marked to be reported in the Ontario Law Reports.