

the head of a passer by, which had been held to be a collateral or casual act of negligence.

But the Court held that the failure to protect passengers was a default in the performance of the duty cast upon the defendants and was not merely an act of collateral negligence; the defendants could not lessen their responsibility to do their duty under the contract by delegating it to a sub-contractor.

"The work here was to be done upon a highway. That placed the case in a special category. The work could only be done under proper precautions to safeguard the public. That duty to do the work in a proper manner extended to the use of the instruments which were necessary for the execution of the work, and a duty lay on the defendants not only in regard to the main purpose of hanging the wires, but also in regard to the instruments which were proper for carrying out the work, to take proper precautions that those instruments did not become a source of danger to the public using the highway. They could not escape liability by delegating the work to a sub-contractor."

"The case" (says a writer) "was certainly on the border line, and it is probable that if the work had not been performed upon a highway (thus rendering special precautions necessary), the negligence might probably have been held to be casual or collateral; but under the circumstances the failure to protect passengers was considered to be a default in the performance of the duty cast upon the defendants, and the Court of Appeal, affirming Kennedy, J., held the defendants liable: Solicitors' Journal, February 8, 1902, 241-242.

In a public and busy street in the City of Toronto, a horse which was being driven, became frightened by a steam roller engaged in repairing an intersecting street, and swerving suddenly upon the plaintiff, who was passing on a bicycle, injured him. The roller was the property of the city corporation, and was being used by paving contractors under a provision in the contract with the corporation. The work was being done for the corporation and it necessitated the use of the roller. It was shewn that the roller was a machine likely to frighten horses of