

Corporation of the City of Toronto, in an action tried with a jury.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

W. E. Raney, K.C., for the appellant.

S. W. Graham, for the defendant corporation, respondent.

FALCONBRIDGE, C.J.K.B. :—The defendant is sued as owning and operating a street railway car on Danforth avenue, Toronto. The plaintiff alleges that his dog was struck and killed by a street car owing to the negligence of the defendant's motorman. The defendant says that the motorman of the car exercised all possible care and diligence, and that the accident occurred by reason of the negligence of the plaintiff, in that he did not observe the provisions of the by-law of the Police Commissioners which enacts that "no person shall allow his dog to run at large in the city. For the purposes of this by-law, a dog shall be deemed to be running at large when found in the street or other public place and not under the control of any person."

Questions were submitted to the jury by the learned Judge and answered as follows:—

(1) Were the plaintiff's injuries caused by the negligence of the defendant? A. Yes.

(2) If so, in what did such negligence consist? A. In not seeing the danger until too late.

(3) Was the plaintiff guilty of any negligence which contributed to the accident? A. Yes.

(4) If so, in what did such negligence consist? A. In not having his valuable dog in proper control while on the street.

(5) Could the motorman, after he first became aware that danger was imminent, have stopped the car in time to avoid the collision, by the exercise on his part of ordinary, reasonable care? A. No.

(6) At what sum do you assess the damages? A. \$100.

Upon these answers the Judge was of opinion that the plaintiff was not entitled to judgment, and dismissed the action (in view of the finding of negligence against the defendant) without costs.

The plaintiff's counsel applied for and obtained an appointment for the reargument of the question whether the plaintiff or defendant would be entitled to judgment upon these findings; that argument was held, but the learned Judge was unable to see his way clear to change his opinion.