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COURT OF APPEAL.

NOVEMBER 15TH, 1911.

*GISSING v. T. EATON CO.

Release—Action for Damages for Personal Injuries—Acceptance of Sum of Money in Settlement—Inadequacy—Improvidence—Absence of Fraud—Undue Advantage not Taken of Inequality or Incapacity.

Appeal by the defendants from the order of a Divisional Court (BOYD, C., LATCHFORD and MIDDLETON, JJ.), affirming (MIDDLETON, J., dissenting) the judgment of TEETZEL, J., at the trial, in favour of the plaintiff Alice Gissing. See 2 O. W.N. 1021.

The action was brought by Alice Gissing and her husband to recover \$5,000 damages for injuries alleged to have been sustained by the plaintiff, Alice Gissing, in the defendants' departmental store in the city of Toronto, by rolls of oil-cloth toppling over and falling upon her, by reason, as the plaintiffs alleged, of the negligence of the defendants' clerks or servants.

After the plaintiffs had made a claim upon the defendants for compensation for the injury, the defendants, through one Black, offered them \$50, and they accepted it, giving a receipt in full. The defendants pleaded this as a release of the cause of action. The plaintiffs replied that the settlement was improvident and the consideration inadequate, and that undue advantage was taken of them by Black.

The issue as to the release was tried by TEETZEL, J., without the assistance of a jury, and was found by him in favour of the plaintiffs.

*To be reported in the Ontario Law Reports.