

HON. MR. JUSTICE CLUTE:—The accident occurred at the junction of Margueretta and Dundas streets, by a collision between a west bound car and the plaintiff's rig, whereby the plaintiff was thrown to the ground and received the injuries complained of.

The plaintiff had driven down to a bicycle shop on the south side of Dundas street, and had left his horse facing west. On coming out of the shop he picked up the weight which held the horse, put it into the buggy and waited until a car went east. He then got into the buggy, when he saw another east bound car and waited until that car went by. He says that he looked both ways before crossing over and did not see any west bound car. He judged that the east bound car was about 30 feet away from the buggy when he started to cross. It does not appear that he looked to the east again before crossing, and he says that he never "knew anything" until he heard the crash.

He further states that there was also another west bound car passed, and that the first west bound car and the first east bound car crossed "just back of the buggy." That is, as I understand the evidence, there were two east bound cars and two west bound cars, and he was struck by the second west bound car.

Many witnesses were called on both sides, and as pointed out by the trial Judge, there is not only a conflict of evidence, but a great difference of opinion among the witnesses for the plaintiff, and also differences of opinion between the witnesses for the defendants.

The case was very carefully presented to the jury and questions submitted. These questions and answers, as they were first brought in, and what took place subsequently are reported as follows:—

"His Lordship reads the jury's answers to the questions as follows:

Q. 1. Was the motorman guilty of negligence? A. Yes.

Q. 2. If so, of what negligence? A. By not applying the brakes when he first noticed plaintiff heading across the tracks.

Q. 3. Could the plaintiff by the exercise of reasonable care have avoided the accident? A. Yes.

Q. 4. If he could, in what respect was he negligent? A. In not seeing he had sufficient time to cross to the north side of the tracks in safety.