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No. 4

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

MARCH 13TH, 1916.

ELLIOTT v. FRABA.

Negligence—Injury by Motor Vehicle to Person Lawfully Standing in Public Place—Contributory Negligence—Emergency—Findings of Fact of Trial Judge—Liability of Driver of Vehicle—Appeal.

Appeal by the defendant from the judgment of the Senior Judge of the County Court of the County of Essex in favour of the plaintiff for the recovery of \$450 and costs in an action for damages for personal injury sustained by the plaintiff from being struck by a motor vehicle driven by the defendant in a public place.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

J. H. Fraser, for the appellant.

T. G. McHugh, for the plaintiff, respondent.

MEREDITH, C.J.C.P., delivering judgment at the close of the argument, said that the case seemed to be a very plain one. In the day-light—that is, while the day-light was still sufficient—in a public space, where there were persons on foot and persons in carriages, the defendant ran down, with his motor carriage, a young woman, who was standing by the side of a driving-track on grounds used for public purposes, in a place from which the defendant, driving his carriage, had been, a few minutes before, warned to keep off.

Counsel for the defendant contended that the young woman was guilty of contributory negligence in standing where she was. The trial Judge found that she was not; and in that the Chief Justice agreed. She was standing with a person who was to a certain extent a caretaker of the place. She was standing upon a place where no vehicle ought to have gone, and upon ground that the defendant had, shortly before, been warned against encroaching upon. The Court could not interfere with the find-