SUPERIOR COURT.

MONTREAL, May 31, 1882.

Before JOHNSON, J.

GOUGEON v. CONTANT.

Damages—Negligence—Horse running away.

The owner of a horse is not responsible for the damage caused by the animal while running away, if he proves that the accident occurred without any fault or imprudence on the part of the person in charge thereof.

PER CURIAM. This is an action of damages for injuries suffered from the defendant, who was driving a horse at a rapid rate, and came in contact with the plaintiff's carriage, in which the latter was driving his wife—the accident bringing on a miscarriage among other injuries, and the damages being laid in all at $1,000.

The plea admits the collision of the two vehicles, but denies that the defendant was driving at an immoderate speed. It then avers that the night was very dark, and that the defendant was driving along the road, two others being with him, when they came on a wheel lying on the way, which had been cast from some other carriage a short time before, and which they could not see; but which frightened the horse, and he became unmanageable, and though they saw the plaintiff's carriage in front of them, which had stopped at the toll-gate, they could not pull up in time; but ran right on to the plaintiff's carriage. That they called out when they saw the plaintiff's carriage standing at the gate, and that the latter was in fault, in remaining there too long. The gist of the plea is that the horse ran away, and was beyond control; and that there was no fault on the part of the defendant.

The proof is in effect that the plaintiff stopped only one minute at the gate to give his ticket; at that moment a witness, who was in the porch of the toll-gate lodge, and saw what happened, heard the defendant call out—he was then about 25 or 30 yards off, and at the gallop, and almost immediately the collision occurred. There was a light, and a reflector on the lodge—throwing light for some distance on the road. The defendant's vehicle was upset and dragged with him and his wife seven or eight feet, and the plaintiff's horse stopped short.

The effects of this accident have been very serious; and *prima facie* there is a case against the defendant requiring answer. The evidence he adduces amounts to this: it does not vary the facts relating to the collision itself, not its consequences; but it is directed to show that the horse was a quiet one, but took fright that night and ran away without any fault on their part, though the three persons in the carriage tried to hold it; and also to show that the plaintiff might have heard them calling out, and have got out of the way of harm in time. As to this latter proposition I do not think it is fairly shown that the plaintiff was in fault in this respect. But upon the main fact that the horse which was being driven by the defendant ran away without any fault of the driver—that it was a quiet horse, but took fright at the *débris* of a previous accident lying in the road, there can be no doubt, if the evidence is to be believed.

What, then, is the rule to be applied? The article 1055 C. C. makes the owner of the animal responsible whether it be under his care at the time or under that of his servants. It is identical with the article of the French code 1385. The foundation of the responsibility is not property, but *faute*, however slight. Laurent comments upon this subject very clearly (20th volume, Nos. 625 and 626.) "Le dommage pour qu'il soit sujet à réparation doit être l'effet d'une faute ou d'une imprudence de la part de quelqu'un. C'est à ce principe que se rattache la responsabilité du propriétaire relativement aux dommages causés par les animaux. Il y a présomption de faute; mais la loi n'exclut pas la preuve contraire. Le propriétaire de l'animal ou celui qui s'en sert sont donc admis à prouver qu'aucune faute ne leur est imputable: nous entendons par cela, non seulement le cas où le fait dommageable serait un cas fortuit: sur ce point, tout le monde est d'accord: mais aussi la preuve qu'aucune faute ne peut être reprochée au propriétaire de l'animal, ou à celui qui s'en est servi, et qu'ils ont fait tout ce qui leur était possible pour empêcher le dommage."

This is the jurisprudence in France. The English rule is the same. I have referred to authority, because I find that in France the question has been controverted, and Marcadé, "*qui tranche tout*," as Laurent says, is of a different opinion. As to the English rule, see the case of *Brown* v. *Collins*, where all the cases are reviewed, reported at length in Thompson on Negligence, vol. 1, p. 65.