

1. Was there any negligence on the part of the defendants or their motorman which caused the collision? A. Yes.

2. In what did such negligence consist? A. In that he did not have his car under control to stop in case of an emergency.

3. Was there any negligence on the part of the plaintiff which caused or contributed to the collision? A. Yes.

4. In what did such negligence consist? A. He misjudged the distance the street-car was from him when he started from the kerb.

5. Notwithstanding the negligence, if any, of the plaintiff, could the defendants' motorman, by the exercise of reasonable care, have prevented the collision? A. Yes.

6. Could the motorman, by the exercise of reasonable care, have prevented the collision, and, if so, what should he have done which he did not do or left undone which he did? A. He should have had his car under control.

Upon these findings, the County Court Judge (Winchester) directed judgment to be entered for the plaintiff with costs.

The main ground of appeal was, that the jury had made the same negligence answer for primary negligence and ultimate negligence—the only negligence found was the great speed at which the street-car was going.

The fair result of *British Columbia Electric R.W. Co. v. Loach*, [1916] 1 A.C. 719, and *Columbia Bitulithic Limited v. British Columbia Electric R.W. Co.* (1917), 55 Can. S.C.R. 1, is, that, if the motorman was running his car at so great a speed that he could not, by the exercise of proper care, avoid the result of a negligence of the plaintiff which might be anticipated, this excessive speed was, in itself, the efficient, the proximate, the decisive cause of the accident, and the contributory negligence of the plaintiff did not neutralise its effect.

In the present case, the jury intended to find that the motor-man did not succeed in stopping his car by reason of the fact that he was going too fast; and, if that were so, the defendants were liable. There is no perceptible difference between sending a car out without proper brakes and running a car at such a speed that proper brakes are useless.

Reference to *Brenner v. Toronto R.W. Co.* (1907-8), 13 O.L.R. 423, 15 O.L.R. 195, 40 Can. S.C.R. 540.

The appeal should be dismissed.

MEREDITH, C.J.C.P., was of the same opinion, for reasons stated in writing.

MAGEE, J.A., and BRITTON, J., concurred.

*Appeal dismissed with costs.*