

FEBRUARY 8TH, 1906.

DIVISIONAL COURT.

LIDDIARD v. TORONTO R. W. CO.

*Negligence—Street Railways—Contributory Negligence—Collision between Electric Car and Waggon—Findings of Jury—Meaning of.*

Appeal by defendants from judgment of BOYD, C., at the third trial of the action with a jury, in favour of plaintiff upon the findings of the jury in an action for personal injuries and injury to property sustained by plaintiff in a collision of an electric car of defendants with an express waggon driven by plaintiff.

The judgment of the Court of Appeal affirming an order of a Divisional Court for a new trial is reported in 3 O. W. R. 852.

The present appeal was heard by MULOCK, C.J., TEETZEL and ANGLIN, JJ.

H. S. Osler, K.C., for defendants.

G. T. Blackstock, K.C., and J. E. Cook, for plaintiff.

The judgment of the Court was delivered by

ANGLIN J.:— . . . Plaintiff charged that the collision was due to the negligence of defendants in several particulars, including excessive speed of the car, lack of control of the car and brakes by the motorman, and inattention on his part to the duty of looking out for crossing vehicles.

The questions put to the jury with their answers were as follows: (1) Did plaintiff take reasonable care in trying to cross Queen street? A. Yes. (2) If so, were plaintiff and his property injured by the negligence of defendants? A. Yes. (3) What was the negligence of defendants, if any? A. In not paying attention to his duties and using all the appliances at hand to stop his car. (4) If plaintiff failed in reasonable care in trying to cross, were defendants (after they saw or should have seen plaintiff's danger) able to avoid the collision? A. No.

The Chancellor, after a colloquy with the jury, appended to the answer to the 4th question this note: "They answer