

highway," the onus of proving that the loss or damage did not arise through his negligence or improper conduct, and it may be difficult, therefore, to direct that judgment be entered for the defendant; but, in my opinion, the defendant is entitled to have the findings of the jury and the judgment entered upon them set aside and to a new trial, and the costs of the last trial and of the appeal should be costs to the defendant in any event of the action.

It is to be regretted that further litigation should be necessary where the amount of the damage is so small, but the questions involved are of very great importance to the owners and users of motor-cars, as well as to the travelling public, and it would be a regrettable thing if the rights of the owners and users of motor-cars, which have been considerably restricted by legislation, should be further restricted by the findings of juries based not upon an impartial consideration of the evidence, but influenced by the well known prejudices, especially of the farming community, and shared by persons who are not farmers, against such vehicles.

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APRIL 30TH, 1909.

DIVISIONAL COURT.

STAVERT v. McNAUGHT.

*Jury Notice—Striking out—Separate Sittings for Jury and Non-jury Cases—Practice—Power of Judge in Chambers to Strike out Jury Notice before Trial—Issues of Fact and Law—Determination as to Method of Trial Left to Trial Judge.*

Appeal by defendant McNaught from order of RIDDELL, J., ante 921, striking out defendants' jury notice.

F. Arnoldi, K.C., for defendant McNaught.

J. H. Moss, K.C., for plaintiff.

R. C. H. Cassels, for third parties.

The judgment of the Court (BOYD, C., MAGEE, J., LATCHFORD, J.), was delivered by

BOYD, C.:—This is a common law case, in which the issues to be tried are of disputed but not very complicated