

If plaintiff so desires, he may apply to the Court for such relief. Unless he gives notice of such an application within one week, however, an order will issue dismissing this appeal with costs.

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DECEMBER 7TH, 1906.

DIVISIONAL COURT.

FLEUTY v. ORR.

*Negligence—Injury to Person by Omnibus in Highway—Action against Owner—Relation between Driver and Owner—Master and Servant or Bailor and Bailee—Question of Fact—Evidence—Inferences—Review by Appellate Court.*

Appeal by defendant from judgment of Judge of County Court of Huron in favour of plaintiff in an action for damages for injuries sustained by her as a result of a carriage in which she was driving being run into by an omnibus driven by one Mullen, who was, as plaintiff alleged, the servant of defendant.

The appeal was heard by MULOCK, C.J., ANGLIN, J., CLUTE, J.

E. L. Dickinson, Goderich, for defendant.

W. Proudfoot, K.C., for plaintiff.

MULOCK, C.J.:—The defendant was a hotel keeper at the town of Wingham, and obtained possession of a pair of horses and an omnibus for the transportation of passengers and luggage between his hotel and the railway station. On 2nd October, 1904, he entered into a contract with a man named Mullen, whereby the latter was given the use of the omnibus and horses, and was entitled to keep for his own use all earnings from the omnibus, in consideration of his paying to defendant 70 or 75 cents a day for the feed of the horses and use of the omnibus, and carrying, by the omnibus, free of charge, between his hotel and the railway station, all persons patronizing defendant's hotel.

On the night in question Mullen was driving the omnibus to the station, when he collided with a carriage containing plaintiff, whereby she was injured, and this action was brought to recover damages from defendant because of the injury.