

THE
ONTARIO WEEKLY REPORTER

VOL. 22 TORONTO, SEPTEMBER 26, 1912. No. 16

DIVISIONAL COURT.

SEPTEMBER 12TH, 1912.

HERRON v. TORONTO R.W. CO.

4 O. W. N. 12.

*Negligence—Street Railway—Person Injured while Crossing Track—
Uncertainty of Findings of Jury—New Trial.*

Action for damages for injuries sustained by plaintiff and his rig by reason of a collision between the latter and a street car of defendants, alleged to have been caused by the negligence of the motorman in charge of defendants' car.

Upon written questions submitted, the jury found both plaintiff and the motorman guilty of negligence, but returned two inconsistent answers on the two questions dealing with ultimate negligence. On this being pointed out to them by the trial Judge, they retired again, and on their return had stricken out the answers to both questions. Not noticing immediately that both answers had been stricken out the trial Judge asked them orally in effect if their answer did not absolve the motorman of ultimate negligence causing the accident, to which they replied in the affirmative.

MEREDITH, C.J.C.P., thereupon dismissed action with costs.

DIVISIONAL COURT (RIDDELL, J., *dissenting*), held, that plaintiff was entitled to a specific finding on the question of ultimate negligence, and that there had been none. New trial directed, costs of trial and appeal to be costs in cause.

Per RIDDELL, J.:—The trial Judge was entitled to submit questions to the jury orally under s. 112 of the Judicature Act, and the jury's answer to the oral question submitted was an express finding on the question of ultimate negligence.

An appeal from a judgment of HON. SIR WILLIAM MEREDITH, C.J.C.P., dismissing the plaintiffs action with costs.

The appeal to Divisional Court was heard by HON. SIR WM. MULOCK, C.J.Ex.D., HON. MR. JUSTICE CLUTE, and HON. MR. JUSTICE RIDDELL.

Alexander MacGregor, for the plaintiff, appellant.

D. L. McCarthy, K.C., for the defendants, respondents.