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APPELLATE DIVISION.

JANUARY 18TH, 1915.

TILL v. TOWN OF OAKVILLE.

Negligence—Death Caused by Electric Shock—Liability of Telephone Company — Evidence of Negligence — Finding of Trial Judge—Reversal on Appeal—Dismissal of Action as against one of two Defendants—Costs Ordered to be Paid by the Other.

Appeal by the defendant the Bell Telephone Company from the judgment of MIDDLETON, J., 31 O.L.R. 405, 6 O.W.N. 390.

The appeal was heard by MEREDITH, C.J.O., GARROW, MAGEE, and HODGINS, JJ.A.

D. L. McCarthy, K.C., and F. M. Burbidge, for the appellant company.

R. McKay, K.C., for the defendant the Corporation of the Town of Oakville, respondent.

M. H. Ludwig, K.C., for the plaintiffs, respondents.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—By the judgment of Middleton, J., it is ordered and adjudged: (1) that the respondent plaintiffs shall recover against the appellant and the respondent corporation $6,000; and (2) that the appellant and the respondent corporation shall pay to the respondent plaintiffs the costs of the action, and that they shall be liable as between themselves for these costs in equal shares.

The reasons for judgment of the learned Judge are reported in 31 O.L.R. 405, and the material facts are there stated.

As I understand the reasons for judgment, the learned trial Judge based his conclusion that the appellant was liable, upon his finding that the risers on the town's electric light pole were brought into contact while Whitney, the employee of the appellant who placed the rings on the messenger wire, was engaged in that work. He acquitted Whitney of any intentional displacement of the risers, but was not satisfied that he might not