

SECOND DIVISIONAL COURT.

FEBRUARY 14TH, 1917.

*BIRDSALL v. MERRITT.

Negligence—Allowing Dog with Propensity for Barking at Horses to be upon Highway—Scienter—Liability for Injury Caused by Horses Running away—Findings of Trial Judge—Appeal.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Haldimand in favour of the plaintiff in an action for damages for injury to the plaintiff's person and property, by reason of the defendant's negligence in allowing his dog, which, to the knowledge of the defendant, had a mischievous propensity for barking at horses, to be upon the highway.

The plaintiff was driving in a buggy upon the highway, when the dog ran out, barking, and frightened the horses, who ran away. The plaintiff was thrown out and injured, one of the horses was injured, and the buggy and harness were damaged.

The action was tried by the County Court Judge without a jury, and the plaintiff was awarded judgment for \$350 and costs.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL and LENNOX, JJ., and FERGUSON, J.A.

G. Lynch-Staunton, K.C., and J. M. Telford, for the appellant, referred to *Zumstein v. Shrumm* (1895), 22 A.R. 263, and *Heath's Garage Limited v. Hodges*, [1916] 2 K.B. 370.

Harrison Arrell, for the plaintiff, respondent, was not called upon.

MEREDITH, C.J.C.P., delivering the judgment of the Court, said that it was not necessary to decide whether the dog was or was not rightly upon the highway. Assume that it was rightly there. The County Court Judge having found that the dog had a mischievous propensity for running out after horses and barking at them, to the knowledge of the defendant, and that the injury to the plaintiff was caused by the dog running out and barking, the Court could not interfere. The case was a clear one upon the evidence, and the appeal should be dismissed.

Appeal dismissed with costs.