

against the happening of such an accident, which should have been foreseen and could have been guarded against, was evidence of negligence on the part of the Street Railway Company to go to the jury, and that their verdict should be sustained. Negligence is the absence of care according to the circumstances, as stated by WILLS, J., in *Vaughan v. Taff Vale Railway Co.*, 5 H. & N. at p. 688, and the greater the danger the higher is the degree of care and diligence demanded. If the danger is great the degree of care required may rise to the grade of a very exact and unremitting attention.

McKay v. Southern Bell Telephone Co., 19 S.R. 695; *Benck v. Milwaukee*, 61 N.W.R. 1101; and *Royal Electric Co. v. Hevé*, 32 S.C.R. 462, followed.

The Court being equally divided the appeal was dismissed with costs.

Potts, for plaintiff. *Munson, K.C.*, and *Laird*, for defendants.

Perdue, J.] MARTEL v. MITCHELL. [Feb. 22.
Parties to action—Pleading—Joinder of causes of action—
Striking out parts of statement of claim in which some of
the defendants not interested.

Motion by the defendant Mitchell to compel the plaintiffs to elect whether they would proceed with the causes of action against all five defendants set out in one part of the statement of claim or with those set out in the remaining part which only affected Mitchell and one other defendant, a company, the complaint against them being that they had conspired together to issue and had issued a pretended and illegal mortgage to Mitchell upon all the assets of the company to the injury of the plaintiffs as shareholders in the company.

Held, on appeal from the referee, that, if the motion had been made by any of the three other defendants, it should have succeeded, as none of them were interested in the matters complained of against Mitchell and the company, following *Gower v. Coultridge* (1898) 1 Q.B. 348, and *Sadler v. G. W. Ry.* (1896) A.C. 450; but that Mitchell could not succeed on the motion as both sets of causes of action concerned him.

As incidental to the matters which led up to the main cause of action against all the defendants, the plaintiffs asked in the statement of claim for judgment for a sum of money alleged to be due to them by the company.

Held, that this did not constitute a separate and distinct cause of action against the company alone so as to bring the case with-