

SECOND DIVISIONAL COURT.

JUNE 13TH, 1919.

*PARSONS v. TORONTO R.W. CO.

Negligence—Collision between Automobile and Street-car in Highway—Negligence of Driver of Street-car—Negligence of Driver of Automobile—Street-car Driven at too High Speed—Car not under Control—Findings of Jury—Primary and Ultimate Negligence the same—Result of Findings.

Appeal by the defendants from the judgment of the County Court of the County of York in favour of the plaintiff in an action for damages for injuries sustained by him when an automobile which he was driving was struck by a street-car of the defendants'. The plaintiff alleged negligence on the part of the employees of the defendants in charge of the street-car. The action was tried with a jury; the findings of the jury were in favour of the plaintiff; the damages of the plaintiff were assessed at \$700, for which sum the trial Judge directed judgment to be entered with costs.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., BRITTON and RIDDELL, JJ.

D. L. McCarthy, K.C., for the appellants.

R. McKay, K.C., for the plaintiffs.

RIDDELL, J., read a judgment in which he said that the plaintiff, driving a Ford touring car, on the afternoon of the 5th June, 1918, stopped on the south side of Dundas street, a few feet behind another motor-vehicle, in order to make some purchases in a shop adjoining. His car was, of course, facing east. Coming out of the shop, he looked to the west, and saw a street-car some 250 to 300 yards away; he then passed around the back of his car and entered it on the north or left side. Before starting his car, he looked in the mirror, and judged the street-car then to be about 150 yards west. He then started up his car to pass around the car immediately in front, and therefore turned to the north. In this way he placed the left wheel of his car on the railway track, although apparently there was room to pass between the standing car and the rail. He had got up a speed of 8 or 10 miles an hour, and had turned to the right or south of the standing car, when his car was struck by the street-car and driven 18 or 20 yards against a trolley-pole.

The evidence of the plaintiff indicated that the street-car was going very fast, from 20 to 25 or 30 miles an hour; the evidence for the defence made it much less.

The jury answered questions as follows:—