

plaintiff's story (if believed) cast upon the defence the burden of explaining the cause of the accident. Why the motorman did not or was unable to stop his car was a fact peculiarly within his own knowledge. He went into the box and told his story, which the jury had not accepted. On the contrary, they had accepted the plaintiff's story, and found no contributory negligence. In view of that finding, the only other reasonable explanation of the cause of the accident was to be found in the jury's answers to questions (1) and (2).

The verdict might, if necessary, be supported on the principles enunciated in *McArthur v. Dominion Cartridge Co.*, [1905] A.C. 72, discussed and explained in *Grand Trunk R. W. Co. v. Hainer* (1905), 36 S.C.R. 180, and *St. Denis v. Eastern Ontario Live Stock and Poultry Association* (1916), 36 O.L.R. 640.

The appeal should be dismissed.

MEREDITH, C.J.C.P., was also of opinion, for reasons stated in writing, that the appeal should be dismissed.

LENNOX, J., concurred.

RIDDELL and ROSE, JJ., dissented.

*Appeal dismissed with costs; RIDDELL and ROSE, JJ., dissenting.*

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SECOND DIVISIONAL COURT.

NOVEMBER 23rd, 1917.

THOMAS v. ROELOFSON.

*Mechanics' Liens—Building Contract—Payment of Builders by Percentage on Time and Material—Application to Material Furnished by Building-owner—Registry of Lien Vacated on Payment of Amount Claimed into Court—Judgment in Action to Enforce Lien—Declaration of Lien—Principal and Agent Sued together—Personal Judgment against both—Election to Hold one—Counterclaim—Damages for Breach of Contract to Finish in a Particular Time—Contradictory Evidence—Finding of County Court Judge—Appeal—Costs—Mechanics and Wage-Earners Lien Act, secs. 27 (4), 42.*

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Waterloo in an action to enforce a lien under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140.