

The plaintiff and a companion were being driven up a heavy hill in a buggy, the horse going at a walk. They were on the right side of the road. The automobile, overtaking, in some way struck the rig and overturned it. The contact was with the left hind wheel of the buggy. The automobile at the time of the impact was so far turned towards the right as to be almost at right angles to the road, and the left guard struck the buggy.

The defendant's case is, that the driver was about to pass on the left, when the plaintiff turned sharply, and, to avoid striking the horse, he attempted to turn his automobile into the bank. The motorman, Jones, says that he was going seven miles per hour, and saw the horse moving towards the centre when 25 or 30 feet from them. Then was the time to act, and, had he been going at less than seven miles per hour, he could and ought to have brought his machine to a standstill in less than 30 feet. He was bound to be on the alert, and had the heavy grade to help him. As it was, he struck the buggy so hard as to shove it, according to his own account, four feet to the side, before it turned over.

The driver of an automobile is called upon to signal before passing, and he should watch to see that his signal has been heard, and that way is being made for him to pass. While it is quite true that a motor is not an outlaw, it must also be borne in mind that the driver is not the lord of the highway, but a man in charge of a dangerous thing, and so called upon to exercise the greatest care in its operation.

I think the appeal should be allowed, and there should be judgment for the plaintiff for \$200 and costs throughout.

SUTHERLAND, J.

OCTOBER 24TH, 1911.

HOLMAN v. KNOX.

Landlord and Tenant—Tenant Taking down Wall of Building—Absence of Permission from Landlord—Breach of Covenant to Repair and Keep in Repair—Forfeiture—Landlord and Tenant Act, R.S.O. 1897 ch. 170, sec. 13—Proper Notice not Given—Waiver by Receipt of Rent—Knowledge—Receipt without Prejudice—Election by Action Brought first for Injunction and Damages only—Relief against Forfeiture—Right to "Build and Rebuild"—Restoration of Wall—Mandatory Order—Pleading—Prayer for General Relief—Damages to Reversion—Costs.

Two actions by the trustees under the will of the Honourable William McMaster, deceased: (1) for an injunction restraining