

this action tried by a jury granted in the exercise of judicial discretion for the following reasons: —

1. The plaintiff lost an arm in consequence of being run over by a car of the defendants and a jury would be more likely to assess the proper damages in such case than a judge, if defendants should be found liable.

Woollacott v. Winnipeg Electric, etc., Co., 10 M.R. 482, discussed and distinguished.

2. The principal issues to be tried were issues of fact, viz., whether the car was going at excessive speed, whether the gong was rung and whether the car should have had a fender in front of it or not; plaintiff alleging and defendants denying negligence in all these respects.

Cardinal v. Cardinal, 25 Ch. D. at p. 777; *Case v. Laird*, 8 M.R. at p. 463, and *Sheppard v. Gilmore*, 34 Ch. D. 179, followed.

Manahan, for plaintiff. *Laird*, for defendants.

Province of British Columbia.

SUPREME COURT.

Full Court]

[Dec. 21, 1906.

ESQUIMALT WATER WORKS COMPANY v. THE CORPORATION OF
THE CITY OF VICTORIA.

Watercourses—Prior rights—English law relating to riparian rights—Introduction of into British Columbia—Appropriation of waters—Authorization of user of water by records or grants—Statutes, construction of.

By s. 9 of the plaintiff company's charter of 1885, they were empowered to survey, set out and ascertain such parts of the land within a prescribed area as they might require for the purposes of their undertaking, to divert and appropriate the waters of Thetis Lake and Deadman's River and its tributaries as they should judge suitable and proper, and to acquire any interests in the said lands or waters, viz.: Thetis Lake and Deadman's River, or any privileges that might be required for the purposes of the company. By s. 10 of the same Act, "The lands, privi-