

Judge of that Court after the trial of the action before him sitting without a jury on the 23rd and 24th June, 1913.

The action was brought against the Corporation of the County of Simcoe and the Corporation of the Township of Sunnidale, and the appeal was against the judgment in so far as by it the action was dismissed as against the last-named corporation.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MAGEE.

W. A. Boys, K.C., for appellant.

A. E. H. Creswicke, K.C., for respondent.

HON. SIR WM. MEREDITH, C.J.O.: — The claim of the appellant is that his horse was injured owing to the presence on the highway on which it was being driven of a cement mixer, which was being used for mixing cement to be used in the construction of a sidewalk; that the cement mixer was a thing calculated to frighten horses, and that it frightened the appellant's horse, causing it to run away and to be seriously injured by coming into contact with a plough which was lying upon the highway.

The sidewalk was being laid by Joseph Dumond, who had been employed by the respondent to lay it, the respondent supplying the materials and the work being done by Dumond; the mixer was used for the purpose of mixing the ingredients—gravel, cement and water—and the mixture was used to form the sidewalk.

The learned Judge found that the injury to the appellant's horse was caused by its taking fright at the mixer, and that it was "negligent and improper to have a machine operating as this one was on the highway without proper precautions being taken to prevent horses from coming near enough to prevent fright;" and he acquitted the driver of the horse of contributory negligence, but held that the respondent was not liable, because, as he also found, Dumond was an independent contractor.

The findings of fact of the learned Judge are supported by the evidence, but his conclusion that the respondent was not answerable for the negligence which caused the injury was, in our opinion, erroneous.