

THEIR LORDSHIPS (v.v.) varied the judgment of Hon. Mr. Justice Middleton, by reducing the amount allowed on the counterclaim by \$1,693; and, with this variation, dismissed the appeal with costs.

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

FEBRUARY 20TH, 1914.

MILLER v. WENTWORTH COUNTY.

5 O. W. N. 891.

Negligence—Municipal Corporation—Automobile Accident—Alleged Defective Guardrail—Contributory Negligence—Recklessness on Part of Driver of Car—Right of Passenger to Recover—Knowledge of Passenger—Assumption of Risk.

MIDDLETON, J., 25 O. W. R. 270; 5 O. W. N. 317, *held*, that where the driver of an automobile was killed in attempting to descend a steep road with sharp turns at night and with an automobile whose head lights were injured so as to give little light, the accident was attributable to his own negligence and not to an insufficient guardrail upon the road.

That a passenger in the automobile, a brother of the driver, could not recover for injuries sustained in the accident, as the facts were all known to him and he, as much as his brother, voluntarily incurred the risk.

Plant v. Normanby, 10 O. L. R. 16, distinguished.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment.

Appeals by the plaintiffs in two actions from the judgment of HON. MR. JUSTICE MIDDLETON, 25 O. W. R. 270.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

W. S. McBrayne, for the plaintiffs.

J. L. Counsell, for the defendants.

THEIR LORDSHIPS (v.v.) dismissed the appeals with costs.