

clusion to which the jury came, and there was, in addition to that, a presumption the burden of rebutting which was on the appellant (Motor Vehicles Act, R.S.O. 1914 ch. 207, sec. 23). The case was one in which, upon the facts, the Court could not interfere. Other minds might have come to a different conclusion upon the evidence, but the judgment of the Court could not be substituted for that of the jury.

It could not be said that the damages were excessive. There was evidence that the respondent had a broken arm, and there was evidence which, if believed, shewed that he was entitled to something for the pain and suffering, and that he had lost time and had been put to expense for medical and other services.

With regard to the rejection of the evidence of the witness who was called in the criminal proceeding against the appellant arising out of the same accident, in which he was charged with criminal negligence, the learned trial Judge was right in ruling that it was not admissible. It was given in proceedings not between the same parties or their privies, and there was no opportunity on the part of the respondent to cross-examine. These are two essentials to make admissible the evidence in former proceedings.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

MARCH 28TH, 1919.

ROUNTREE v. WOOD.

*Contract—Underwriting Preference Shares of Company—Consideration—Commission Paid in Part in Ordinary Shares—Undertaking of Promoters to Buy Shares from Underwriter at Reduced Price—Alternative Provision as to Sale of Shares in Event of Underwriter “Retaining” them—Election—Evidence—Receipt—Reasonable Time for Making Request to Buy—Release.*

An appeal by the defendants from the judgment of MASTEN, J., 15 O.W.N. 264.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

Wallace Nesbitt, K.C., for the appellants.

J. R. Roaf and A. C. McMaster, for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, referred to the agreement between the parties, which shewed that the