

SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

JUNE 15TH, 1914.

LAIRD v. TAXICABS LIMITED.

6 O. W. N. 505.

Trial—New Trial—Judge's Charge, Reflexion in, on Character of Parties and Purpose of Hiring—Jury Prejudiced by Charge.

On appeal from judgment of LATCHFORD, J., in favour of plaintiffs in action for damages for injuries to automobile, with counter-claim for injuries to taxicab, in collision.

SUP. CT. ONT. (2nd App. Div.) set aside judgment and directed new trial, holding that, the whole question being who was to blame for accident, certain intimations in charge to jury that defendant company let out taxicabs for immoral purposes as "travelling brothels," with reflexions upon character of occupants, tended to prejudice jury, notwithstanding instructions to disregard them.

Action to recover damages because of injury to plaintiff's automobile resulting from a collision with a taxicab of defendant company in High Park, shortly after midnight of the 25th of September, 1913.

The case was tried by Hon. Mr. Justice Latchford, with a jury, and a verdict was rendered for plaintiff for \$1,750, from which defendant company appealed. The verdict was a general one, no questions having been submitted to the jury.

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

J. P. MacGregor, for the defendant.

T. N. Phelan, contra.

HON. SIR WM. MULOCK, C.J.Ex.:—The collision occurred near the bottom of two hills which slope towards each other. When descending the hill which slopes from the north to the south, Finmark, the plaintiff's chauffeur, saw the defendant company's taxicab some hundreds of feet away on the top of the other hill which slopes towards the north. The taxicab had two bright acetylene gas headlights lit which enabled Finmark to have an ample view of its movements,