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HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

APRIL 11TH, 1911.

GISSING v. EATON.

Negligence—Damages—Alleged Settlement—Improvident Release—Inadequate Consideration—Undue Influence—Parties not on Equal Terms.

Appeal by the defendants from the judgment of TEETZEL, J. The plaintiffs, Alice Gissing and her husband, Albert A. Gissing, brought action against the T. Eaton Co. to recover \$5,000 damages for injuries alleged to have been inflicted on the plaintiff, Alice Gissing, by rolls of oilcloth that were standing in the defendants' store toppling over and falling on her. At the trial the action as against the plaintiff Albert Gissing was dismissed, and judgment given Alice Gissing for \$750 and costs. Defendants set up a release for \$50 signed by the plaintiff, in answer to the claim, and the trial Judge tried that question first, before submitting the main issue to the jury. He allowed the plaintiff at the trial to amend her reply, setting up that the release or alleged settlement was improvident and inadequate, and not such as should be allowed to stand in answer to her claim. As to whether the alleged settlement furnished an answer to the plaintiff's claim, on the ground of being an accord and satisfaction or discharge of it, the trial Judge decided that it did not afford such an answer. Then evidence on the main issue was submitted, and the case went to the jury, who allowed the plaintiff \$750 damages. It was on the question of the release that the appeal was principally argued, though the appellants claimed also that the damages were excessive.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

I. F. Hellmuth, K.C., and G. W. Mason, for the defendants.
T. N. Phelan, for the plaintiffs.