

There was evidence that the motorman took no effective means to stop the car, although it was said to be going at an excessive rate of speed, until the car was only a little more than five feet from the horses; if that, or anything like it, be true the finding cannot reasonably be found fault with. The car was going much faster than the horses, if some of the testimony be true five times faster, so that, at a distance much greater than anything like five feet, the imminent danger of the plaintiff must have been very apparent, and the motorman testified that he saw the horses and waggon from the first, and that he realized the danger when 70 or 80 feet away; in the presence of such imminent danger—when it became evident—the failure to take “emergency” steps to stop the car was negligent, very negligent; it may very well be that if such steps had been taken the accident would have been avoided; or even if collision were wholly unavoidable it might have been harmless, or almost so.

If wrong is done, the doing of it rests upon the jury, who are the sole judges of the facts regarding which the testimony is such that reasonable men might find as they have found.

The appeal must be dismissed.

HON. MR. JUSTICE MIDDLETON.

MAY 15TH, 1912.

RE SOLICITOR.

3 O. W. N. 1274.

Solicitor — “Retainer” — Law Reform Act, 9 Edw. VII., c. 28, ss. 22 et seq.—Obligation of Solicitor to Account—Bill of Costs to be Delivered and Taxed.

Motion by client for delivery by solicitor of bill of costs referred by Master in Chambers to a Judge in Chambers, 21 O. W. R. 948.

The client, a foreigner in gaol, awaiting transference to the Central Prison, retained the solicitor to take proceedings to quash his conviction and gave the solicitor \$300, signing a writing that it was given as a retainer.

MIDDLETON, J., held that on the solicitor's own shewing the amount given was not given in pursuance of a definite agreement as to the sum to be charged and so allowable under 9 Edw. VII. c. 28, s. 22 et seq., nor was it a “retainer” as it was not understood by the client as such.

Order made for delivery and taxation of bill, costs reserved until after taxation.