

The appeals were heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.

J. S. Fullerton, K.C., and W. C. Chisholm, for appellants the city corporation.

D. C. Ross and W. H. Irving, for appellants the paving company.

A. J. Russell Snow and C. B. Nasmith, for plaintiff.

Moss, C.J.O.—It was contended on behalf of the city that the terms under which the paving company were accorded the use of the roller amounted to a hiring by the paving company, so as to place its working and control entirely in their hands, and that the city were relieved from responsibility for any negligence while the roller was engaged in the paving company's work. Whether the hiring and user were of such a character as is sought to be ascribed to them by the city, need not be determined, though the recent case of *Waldock v. Winfield*, [1901] 2 K. B. 596, seems opposed to the argument on behalf of the city, for upon another principle the liability of the city seems clear.

The testimony establishes that the roller is a machine calculated to frighten horses of ordinary courage and steadiness, and of this the city's servants and employees were aware.

The work for the purposes of which the use of the roller was committed to the paving company was being done on a public street near to Yonge street, along which there is constant traffic, with horses and vehicles, passing the corner of St. Alban's street. It was shewn that at other times and on other occasions horses had been frightened by and had shied at the roller when in motion, and it must have been obvious to every one who had to do with it that it could not be used where it was being used on the day of the accident, with safety to the traffic on Yonge street, unless some precautions were taken. That this was felt by those in charge is shewn by the fact that the witness Cutbush testifies that it was part of his duty to precede the roller on its trips towards Yonge street and to make some signal, as by holding up his hand, to warn drivers and horsemen on Yonge street of its approach. The evidence fully supports the findings of the learned Chief Justice that proper precautions were not taken on the occasion in question. But it is argued for the city that the work was being done by the paving company as independent contractors, and that it was owing to their negli-