

KING'S BENCH.

Metcalf, J.]

[Nov. 28, 1911.]

ROSE v. CLARK.

Negligence—Motor vehicle—Duty of driver with regard to pedestrians—Damages—Costs—Recovery of amount within jurisdiction of the County Court—King's Bench Act, Rule 933.

The plaintiff, when on his way to board a street car which had stopped at a switch point at a place where it was usual for passengers to get on the cars, was knocked down and injured by a motor vehicle driven by the defendant's chauffeur past the street car. It appeared that the chauffeur was driving at a moderate rate of speed on the proper side of the road behind a team going in the same direction, that the team, when just opposite the street car, turned to the right to avoid hitting the plaintiff, that the chauffeur then proceeded, thinking the road was clear, when suddenly the plaintiff appeared before him on the pavement, that he blew his horn and applied the brakes and did all he could to avoid hitting the plaintiff, but that the latter appeared confused, took a step backward and was struck, although not run over.

Held, 1. The circumstances and the situation were such as to require the chauffeur to exercise a more than ordinary degree of care for the safety of pedestrians and to anticipate the possibility of being confronted at any time in such a situation by pedestrians who for the moment lose control of their mental faculties, and are overcome by a sudden panic, although at other times of healthy and rational intellect, and that under the circumstances the chauffeur was guilty of such negligence that the defendants were liable for the damages suffered by the plaintiff.

2. The trial judge assessed the plaintiff's damages at \$344, an amount within the jurisdiction of the County Court; but, being satisfied that the plaintiff's solicitor honestly believed that the plaintiff would recover an amount beyond that jurisdiction, while giving him no costs, he gave the statutory certificate, under Rule 933 of the King's Bench Act, to prevent the defendant setting off any costs.

Howell, for plaintiff. *Anderson*, K.C., for defendants.