

has an equal right of travel. The user must be reasonable, and the law is settled that any one who uses any part of a highway in an unusual and unreasonable manner, and thereby causes special damage to another, is liable in an action at the suit of that other.

This case, it seems to me, narrows down to a consideration of the following questions, viz.: (1) was the placing of the defendants' car upon the side of the roadway and leaving it there unattended for a period of 3½ hours a reasonable use of the highway? and (2) if not, was this unreasonable user the cause of the damage of which the plaintiff complains?

The operation of automobiles upon the highways of this Province has long since passed the experimental stage, and, having become such a fruitful source of litigation, judicial notice has frequently been taken of the fact that these vehicles are very apt to cause fright to horses approaching them. The defendant George H. Findlay, who appears to have had considerable experience in handling a car, admitted that a standing car might frighten some horses, but that it would depend upon the horse. . . .

[Reference to *Roe v. Village of Lucknow* (1894), 21 A.R. 1, at p. 11; *Howarth v. McGugan* (1893), 23 O.R. 396; *Harris v. Mobbs* (1878), 3 Ex. D. 268; *Wilkins v. Day* (1883), 12 Q.B.D. 110; *McIntyre v. Coote* (1909), 19 O.L.R. 9.]

In the present action there was no suggestion of contributory negligence or want of care on the part of Weir either in the pleadings or the evidence offered.

I have read the many cases cited by counsel on both sides and a number of others, and, applying the principles which seem to fit the facts in this action, I am unable to escape a finding against the defendants.

It was urged on their behalf that the length of time their car remained on the highway could not have affected the plaintiff, as the situation would have been the same had the car been there only 30 seconds before the horse passed it, instead of 3½ hours. The answer to that, of course, is, that, had a reasonable use of the highway been made by the defendants, the car would not have been there to frighten the horse. Had the accident happened while meeting a moving car reasonably operated, the defendants would have been entitled to protection; but, leaving the car on the side of the road for a period which, I think, the authorities bind me to hold unreasonable, unattended and without reasonable safeguards to prevent injury to passers-by, they take the