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APPELLATE DIVISION.

OCTOBER 23RD, 1914.

BAILEY v. FINDLAY.

Highway—Improper Use of—Motor Vehicle Left Standing for Unreasonable Time—Injury to Horse—Liability of Owners of Car—Proximate Cause of Injury—Negligence—Contributory Negligence—Motor Vehicles Act, 2 Geo. V. ch. 48—"Dead" Car—Lights—"Between Dusk and Dawn"—Secs. 6(2) and 8(3) of Act.

Appeal by the defendants from the judgment of SCOTT, Co. C.J., ante 24.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, and LENNOX, JJ.

Grayson Smith, for the appellants.

W. H. Stafford, for the plaintiff, respondent.

MULOCK, C.J.Ex.:—This judgment may be maintained on two grounds, under the statute and at common law. We think that sec. 8(3) of the Motor Vehicles Act applies. If it does, the onus was upon the defendants to shew that the accident was not caused by their negligence. They have not discharged that onus. Primâ facie they are liable. Probably at common law the defendants are equally liable. It is quite lawful for a vehicle to be on the street; and, if it is doing nothing unlawful, then the owner is not liable; but, if he allows it to be on the street an unlawful length of time, then from the time it becomes unlawful to be on the street, from the time it is unlawfully there, the owner is liable for damages caused by his illegal act.

The trial Judge has found that the motor car was on the highway an unreasonable length of time, and the owners would be liable if the accident was caused by the car being there, and it is clear it was caused by it being there, and being there in a negligent way. The accident could have been prevented if the car had been looked after in some way; a person might be there to warn people, it might have been lighted, many things

might have been done to have avoided the accident. We think that the trial Judge was quite right in finding that at common law the defendants were liable.

It was quite clear that the brother and sister met two other motor cars, and the horse did not shy at them, because they were motor cars that were lighted; but, when the horse came to this car, without any light, he was frightened. Whatever it may be, it is absurd to say that this horse did not break his leg when he plunged. He reared when he came to the car, and when he came down he was found on three legs. We must use our common sense. A jury would be warranted in drawing the inference that when he reared and came down the leg was broken.

The appeal is dismissed with costs.

CLUTE, J.:—I agree, but I wish to say that I desire to place my judgment on the statute. The onus was not rebutted or discharged; and, further than that, there was an express direction under the Act that there must be a light. There is no question that the accident occurred by reason of the defendants' car not being lighted.

RIDDELL, J.:—I place my judgment upon the common law, on the admitted fact that the car had been an unreasonable length of time on the highway. The horse was frightened by the car being unlawfully there.

LENNOX, J.:—I agree.

Appeal dismissed.

OCTOBER 26TH, 1914.

LABATT LIMITED v. WHITE.

Execution—Action for Declaration in Aid—Husband and Wife—Interest of Husband in Land Vested in Wife—Evidence—Appeal.

Appeal by the plaintiffs from the judgment of LENNOX, J., 6 O.W.N. 127.

The appeal was heard by MULOCK, C.J.Ex., MACLAREN, J.A., CLUTE and RIDDELL, JJ.

W. R. Smyth, K.C., for the appellants.

A. E. H. Creswicke, K.C., for the defendants, respondents.

THE COURT dismissed the appeal with costs, reserving to the plaintiffs the Kuntz Brewery Company Limited any rights in respect to a promissory note made by both defendants.

OCTOBER 26TH, 1914.

COOK v. BARSLEY.

Vendor and Purchaser—Agreement for Sale of Land — Oral Agreement—Possession Taken by Purchaser — Payment of Taxes—Statute of Frauds—Part Performance—Agreement Enforced against Grantee of Vendor with Actual Notice—Trespass—Injunction—Appeal—Damages.

Appeal by the plaintiff from the judgment of BRITTON, J., 6 O.W.N. 608.

The appeal was heard by MULOCK, C.J.Ex., MACLAREN, J.A., CLUTE and RIDDELL, JJ.

R. T. Harding, for the appellant.

J. J. Coughlin, for the defendant, respondent.

THE COURT dismissed the appeal with costs. If the parties agree thereto, the defendant is to be allowed $30 damages in addition to the $20 allowed by the trial Judge for crop taken off the land in question by the plaintiff; such sum to be deducted from the purchase-money to be paid by the defendant within three months. If there is default in payment, the contract to be at an end.

OCTOBER 29TH, 1914.

ROUS v. ROYAL TEMPLAR BUILDING CO.

Building—Encroachment on Neighbour's Land—Street-line — Boundaries—Surveys — Dedication — Presumption — Acquiescence in Public User—Conventional Boundary—Projecting Eaves—Discharge of Water—Obstruction to Light —Easement—Implied Grant—Presumption — Injunction —Damages—Costs.

Appeal by the plaintiff from the judgment of MIDDLETON, J., 6 O.W.N. 498.

The appeal was heard by MULOCK, C.J.Ex., MACLAREN, J.A., CLUTE and RIDDELL, JJ.

A. M. Lewis, for the appellant.

G. S. Kerr, K.C., for the defendants, respondents.

THE COURT dismissed the appeal with costs.

HIGH COURT DIVISION.

MEREDITH, C.J.C.P., IN CHAMBERS. OCTOBER 30TH, 1914.

*REX v. RAE.

Criminal Law—True Bill for Murder — Application for Bail.

Application by the defendant for bail, made in the first instance at the Guelph assizes, on the 6th October, 1914, and renewed in Chambers, at Osgoode Hall, on the 25th October, 1914.

C. L. Dunbar, for the prisoner.
E. Meredith, K.C., and E. Bayly, K.C., for the Crown.

MEREDITH, C.J.C.P.:—The inclination of my judgment, when this application was first made, was, and, but for the decided cases, of the same character as this case, would still be, to let the prisoner to bail, if bail of a very substantial character were given. . . .

In all applications for bail, resting in the discretion of a Court or of a judicial officer, in criminal cases, the paramount question should be whether the presence of the accused person, for trial in due course, would be assured if the application were granted; if that cannot be made sure by other means, then there is no other proper course but detention in close custody.

In determining whether a trial in due course would ensue without such detention, several circumstances must be taken into consideration, such as: the nature of the offence charged; the extent of the punishment that might follow upon a conviction; the nature of the evidence likely to be adduced at the trial, and so the probability of conviction or of acquittal; the character of the accused person, and of the ties, if any, which are likely to bind him to remain in the country and stand his trial; and the speed or slowth in which the prosecution is being carried on; as well as any other circumstances likely to affect the accused person's fear of conviction or confidence of acquittal; and his chances in an attempt to escape from trial.

The statute-law, in favour of a prisoner, bearing upon this subject, must also of course be borne in mind: I refer especially to the provisions contained in sec. 6 of the Habeas Corpus Act, 31 Car. II. ch. 2 (R.S.O. 1897, vol. 3, p. xxxix.); and sec. 699 of the Criminal Code, R.S.C. 1906, ch. 146.

*To be reported in the Ontario Law Reports.

In cases of murder, and the more so after a preliminary investigation, by a judicial officer, an investigation which ought to be thorough, and at which the accused person has the right to give any such relevant evidence as he chooses, and after a commitment for trial as the result of that investigation—and still more so in cases such as this, in which a true bill has been found also—the rule is, and should be, that the accused person should not be admitted to bail; the temptation to escape from a trial in such a case being too great to leave much, if any, great hope that bail to any amount would overcome it. But there well may be some exceptions to that rule, including the statutory one contained in the Habeas Corpus Act: see Regina v. Bowen (1840), 9 C. & P. 509.

And, having regard to all the circumstances of this case, including of course the fact that the prisoner was ready for and desired trial at the last Wellington assizes, the inclination of my judgment was, as I have said, to consider this case an exception to the rule; but I am now obliged to say that that inclination does not seem to run quite parallel with the decided cases; and it is a thing of great importance that there should be uniformity of practice in this respect; that the same rule should be applied to all accused persons in the like manner; that there should be no reason given for any one to think that it might depend upon the particular Judge applied to whether such an application as this failed or succeeded.

In the case of Regina v. Chapman, 8 C. & P. 558, the Chief Baron, Lord Abinger, at an Oxford assizes in the year 1838, seems to have said that in no case of murder, after bill found, should the prisoner be admitted to bail. And that too was a case like this, in which, at the instance of the Crown, the trial had been put off until the next assizes. But I cannot think any such hard and fast rule was intended to be laid down. I treat the language of the learned Chief Baron as having been inspired by the facts of the case he was considering and to be applicable to cases of like circumstances. I should add too that that case was made stronger for the applicant because bail to any amount that might be required was offered.

In the cases in the Courts of this Province, of Regina v. Keeler (1877), 7 P.R. 117, and Regina v. Mullady (1868), 4 P.R. 314, in each of which the question of granting or refusing the application was treated not as subject to any hard and fast rule, but as being in the judicial discretion of the Court, there were circumstances so much like those of this case that I can-

not doubt that, had this very case come before either of the Chief Judges who decided those cases, the application would have been refused, as it was in each of the cases I have mentioned. . . .

The strictness of the practice against admitting to bail in murder cases under ordinary circumstances, especially after bill found, is maintained through all the cases, that I have read, in this country, in England, in Ireland, and in the United States of America; and, though it may be that, having regard to the growing wider range and efficiency of the extradition laws generally, and other circumstances making escape from justice more difficult, as well as growing greater regard for the liberty of the subject not convicted of crime, that strictness may be somewhat mitigated in time, the cases as they stand compel me to refuse this application now: but that will not prevent a further application being made and being successful, if other circumstances arise favouring it sufficiently to admit the prisoner to bail without disregarding the decided cases.

CORRECTION.

In RE HICKEY, ante 142, at p. 144, lines 8 and 12, for "rightly" read "roughly."