

## ROOT v. MCKINNEY

1929  
\*Oct. 4.ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ALBERTA*Automobile—Accident—Negligence—Pedestrian run into by car coming  
from behind—Whether pedestrian negligent*

APPEAL from the decision of the Appellate Division of the Supreme Court of Alberta (1), affirming on equal division of the court the judgment of the trial judge, Boyle J. (2) and maintaining the respondent's action.

The respondent was walking at night along the centre of the graded portion of an unpaved street. There was no sidewalk but at one side was a path. It was raining slightly and the street was muddy. The annual fair was in progress in the city and the street in question was adjacent to the fair grounds. The respondent saw the light of an approaching motor car and started to move over to the right side of the street. While doing so he noticed that the ground was lighted by the lights from a car coming from behind. He did not stop or look back and was struck by the latter car (the appellant's) before he reached the ditch.

The trial judge (2) awarded respondent damages. The appellate court (1), affirming this judgment, held that the respondent took reasonable precautions to avoid being struck and was not negligent and that the appellant had not satisfied the onus on him of proving that the damage did not arise through his negligence.

At the conclusion of the argument of counsel for the appellant before the court, and without calling on counsel for the respondent, the court orally delivered judgment dismissing the appeal with costs.

*Appeal dismissed with costs.**O. M. Biggar K.C.* for the appellant.*Eug. Lafleur K.C.* for the respondent.

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\*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ.

(1) (1929) 24 Alta. L.R. 181; (2) [1929] 1 W.W.R. 884.  
[1929] 2 W.W.R. 340.