

VINCENT DAIGLE (PLAINTIFF)..... APPELLANT;

1943

AND

*Oct. 25.

*Nov. 8.

ROSE ALBERT (DEFENDANT)..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK,
APPEAL DIVISION

Motor vehicles—Negligence—Plaintiff, after getting off standing vehicle and starting to cross road, colliding with passing motor car driven by defendant, who had not sounded horn—Suit for damages—Court holding, in the circumstances of the case, that plaintiff's damages were caused by the fault of both parties and that (under The Contributory Negligence Act, N.B.) damages should be apportioned equally between them.

APPEAL by the plaintiff from the judgment of the Supreme Court of New Brunswick, Appeal Division (1), reversing (Richards J. dissenting in part) the judgment of LeBlanc J. given in favour of the plaintiff for damages for injuries suffered by him by reason of a collision between him and a motor car driven by the defendant who was passing, without having sounded horn, a standing motor vehicle from which the plaintiff had alighted and was proceeding to cross the road. The last-mentioned vehicle was a tractor to which a trailer, on which was a load of straw, was attached.

P. J. Hughes K.C. for the appellant.

J. F. H. Teed K.C. for the respondent.

THE COURT.—We are all of the opinion that it was by the fault of both parties to the action that the plaintiff's damages were caused and that the liability to make good the damages should be apportioned, by virtue of the provisions of *The Contributory Negligence Act* of New Brunswick, equally between them.

We refrain from expressing any view upon the interpretation, or the application to the facts of this particular case, of sections 38 and 42 of *The Motor Vehicle Act* of New Brunswick which gave rise to considerable divergence of opinion among the judges in the Courts below. We rest our judgment upon the failure by both parties in the circumstances of the case to use reasonable care.

*PRESENT:—Davis, Kerwin, Hudson, Taschereau and Rand JJ.

1943

DAIGLE
v.
ALBERT.The Court

The appeal is allowed and judgment directed to be entered in favour of the plaintiff (appellant) against the defendant (respondent) in the sum of \$2,453.18, being one-half the amount of damages assessed by the trial judge. The appellant shall have one-half of the costs of the action and trial, and all the costs of his appeal to this Court. The respondent shall have her costs of her appeal to the Appeal Division of the Supreme Court of New Brunswick.

Appeal allowed with costs.

Solicitor for the appellant: *P. J. Hughes.*

Solicitor for the respondent: *A. M. Chamberland.*
