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* May 28.

THE COCA-COLA COMPANY OF CANADA LIMITED AND KEN GUITEAU (DEFENDANTS) ..... APPELLANTS;

AND

JOHN FORBES (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Appeal—Functions of appellate court when dealing with verdict of jury—Collision of motor trucks—Questions as to negligence causing or contributing to accident—Findings of jury—Conclusiveness thereof unless verdict so wholly unreasonable as to show that jury could not have been acting judicially.

* PRESENT:—Rinfret, Kerwin, Hudson, Taschereau and Bond (*ad hoc*) JJ.

(1) (1832) 3 B. & Ad. 523.

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COCA-COLA COMPANY OF CANADA LTD. v. FORBES.

APPEAL by the defendant from the judgment of the Court of Appeal for Saskatchewan (1) allowing the plaintiff's appeal from the judgment of Taylor J.

The action arose out of a collision between the defendant company's motor truck, driven by the defendant Guiteau, and the plaintiff's motor truck, which collision occurred as Guiteau was proceeding to pass the plaintiff's truck and the plaintiff was turning his truck left to enter a filling station.

There was conflicting evidence on certain questions, including the question whether or not the plaintiff gave the proper signal before making the left turn. Also the trial judge ruled that the plaintiff's rear view mirror did not comply with the statutory requirements.

The jury, in answer to questions submitted to them, found that the injuries received by the plaintiff and damages to his truck were sustained in consequence of the negligence of the defendant Guiteau; that such negligence consisted " (1) in failing to take reasonable precautions in attempting to pass the plaintiff's truck; (2) in disregarding plaintiff's signal of his intention to turn left; (3) in failing to sound horn soon enough "; and that the plaintiff was not guilty of contributory negligence.

The trial Judge, however, upon motion for judgment, heard argument and subsequently ordered that the action be dismissed with costs. He held that it was quite clear that plaintiff's truck was not equipped with a mirror to answer the statutory requirements; also that the evidence incontrovertibly established contributory negligence on the part of the plaintiff; that plaintiff, by his own negligence and by driving at the time in a defectively equipped truck, such defect contributing to the accident, was barred from recovering.

The Court of Appeal for Saskatchewan (1) reversed the judgment of the trial Judge and gave judgment for the plaintiff for the amount of damages found by the jury.

The defendants appealed to this Court.

G. P. Campbell K.C. and *C. M. Pyle* for the appellants.

E. M. Hall K.C. for the respondent.

(1) [1941] 3 W.W.R. 909; [1942] 1 D.L.R. 184.

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COCA-COLA COMPANY OF CANADA LTD. v. FORBES.

After hearing the argument of counsel for the appellants, the members of the Court retired for consultation, and, on their returning to the Bench, without calling on counsel for the respondent, Rinfret J. (presiding) delivered the judgment of the Court as follows:

RINFRET J. (oral)—Mr. Hall, the Court has come to the conclusion that they do not need to hear you.

We are unanimously of the opinion that the appeal fails. We must say that Mr. Campbell has put his case as completely as it could be done, and in a certain way that really enables us to come to a conclusion at once, because we think we have everything before us to enable us to give a decision.

We have had on any number of occasions the opportunity of stating how this Court looks upon its functions when it is dealing with the verdict of a jury. Perhaps an instance of that is in the case of *Canadian National Railways* v. *Muller* (1), where the present Chief Justice expressed himself in the following way:

> We premise that it is not the function of this Court, as it was not the duty of the Court of Appeal, to review the findings of fact at which the jury arrived. Those findings are conclusive unless they are so wholly unreasonable as to show that the jury could not have been acting judicially;

and he there referred to the decision of the House of Lords in the case of *Metropolitan Ry. Co.* v. *Wright* (2). Then the Chief Justice goes on to say:

> In construing the findings, moreover, one must not apply a too rigorous critical method; if, on a fair interpretation of them, they can be supported upon a reasonable view of the evidence adduced, effect should be given to them.

Now in this case we are of the same opinion as the Court of Appeal, that it cannot be said that the verdict at which the jury arrived was so wholly unreasonable as to show that the jury could not have been acting judicially. It is true that at the conclusion of the plaintiff's case the trial Judge intimated that he might enter a non-suit, but the defence, of course, must stand the consequences from the fact that it decided to adduce evidence, and it was certainly open to the jury, when it came to consider its

(1) [1934] 1 D.L.R. 768; 41 Can. Ry. Cas. 329.

(2) (1886) 11 App. Cas. 152, at 156.

verdict, to take into consideration not only the evidence given for the plaintiff but also the evidence given for the defendant.

On the whole—and, I must say, having the advantage of the decision of the Court of Appeal, which was unanimous—we cannot see that we can disturb the judgment of the Court of Appeal and the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Thom, Bastedo, Ward & McDougall.*

Solicitors for the respondent: *Hall & Maguire.*