

1907  
 \*May 17.  
 \*May 20.

RUDOLPHE TURCOTTE AND  
 CHARLES DESJARDINS (DE-  
 FENDANTS) . . . . . } APPELLANTS;

AND

CATHERINE RYAN AND OTHERS }  
 (PLAINTIFFS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL  
 SIDE, PROVINCE OF QUEBEC.

*Master and servant—Negligent driving—Horse owned by servant—  
 Vehicle and harness owned by master—Duty of employee —  
 Liability for damages.*

T., an employee of D., while in discharge of the duties of his employment, driving his own horse attached to a vehicle belonging to his employer, who also owned the harness, negligently caused injuries to C., which resulted in his death. In an action for damages by the widow and children of C.,

*Held*, affirming the judgment appealed from (Q.R. 15 K.B. 472), that as the injury complained of was caused by the fault of the servant during the performance of duties in the course of his employment, the master and servant were jointly and severally responsible in damages.

**A**PPEAL from the judgment of the Court of King's Bench, appeal side (1), affirming the judgment of the Superior Court, District of Montreal, which maintained the plaintiffs' action with costs.

The defendant, Turcotte, was employed by the defendant, Desjardins, as a travelling clerk to take orders

\*PRESENT:—Fitzpatrick C.J. and Girouard, Davies, Idington, MacLennan and Duff JJ.

for merchandise and, for this purpose, it had been agreed that Desjardins should furnish him with a vehicle and a harness which Turcotte used in the course of his employment, soliciting orders and delivering merchandise. This arrangement had been made, at Turcotte's suggestion, in order that he might not be blamed for driving his employer's horse at excessive speed.

While engaged in the course of his said employment, Turcotte was driving the horse and vehicle mentioned, at a trot, round the corner of two public streets in Montreal, and carelessly drove against one Callery, the deceased, who was in the act of crossing one of the streets, thereby causing injuries which resulted in his death.

In an action by the widow and two daughters of the deceased to recover damages against both master and servant, jointly and severally, they were successful in both courts below.

*Descarries K.C.* for the appellants. The death of Callery was not due to any fault of Turcotte, but resulted from his own imprudence and want of proper care in attempting to cross the street in front of the approaching vehicle.

The defendant, Desjardins, cannot be held responsible in damages for the act of his employee because, at the time of the injury, Turcotte was driving his own horse, the harness and vehicle being merely loaned to him, and he alone could be held liable, in case of negligence. See *Beauchamp*, Code Civil, art. 1053, No. 716; *Moffette v. Grand Trunk Ry. Co.*(1); *Brouillard v. Côté*(2); *Garand v. Allan*(3); Beau-

(1) 16 L.C.R. 231.

(2) 15 R.L. 715.

(3) Q.R. 15 S.C. 81.

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dry-Lacantinerie, n. 2912, pp. 1140, 1141, 1142; Fuzier-Herman, art. 1384, n. 31, p. 1738; n. 53, p. 1739; Cass. 30 Oct., 1902.

*Atwater K.C.* and *Morrison* for the respondents. The defendant, *Turcotte*, was disobeying the city by-law No. 50, section 31, which declares that "No person shall drive any horse faster than a walk, when coming out of any cross street or court-yard into any of the main or leading streets, in the said city or in turning any corner of a street in the same." He therefore, was guilty of gross carelessness; *Grand Trunk Railway Co. v. Hainer* (1); *Sault Ste. Marie Pulp and Paper Co. v. Myers* (2) per *Taschereau C.J.*, at pages 28 *et seq.*; *Canada Atlantic Railway Co. v. Henderson* (3); *Halifax Electric Tramway Co. v. Inglis* (4); *Grant v. The Acadia Coal Co.* (5).

He was, at the time, in the course of his employment, and his employer is, beyond question, jointly and severally liable for the damages caused. Art. 1054 C.C.; 3 *Beaudry-Lacantinerie*, "Obl." n. 2911, pp. 1138, 1144-5; *Limpus v. London General Omnibus Co.* (6); *Joel v. Morison* (7); *Martin v. Temperley* (8); *Patten v. Rea* (9).

The judgment of the court was delivered by

THE CHIEF JUSTICE.—The appeal is dismissed with costs on the very simple ground that the accident was

(1) 36 Can. S.C.R. 180.

(2) 33 Can. S.C.R. 23.

(3) 29 Can. S.C.R. 632.

(4) 30 Can. S.C.R. 256.

(5) 32 Can. S.C.R. 427.

(6) 1 H. & C. 526.

(7) 6 C. & P. 501.

(8) 4 Q.B. 298.

(9) 2 C.B. (N.S.) 606.

caused, as found by the two courts below, through the fault of the defendant, Turcotte, when he was in the service of the other defendant, Desjardins, and during the course of his employment.

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Justice.

*Appeal dismissed with costs.*

Solicitors for the appellants: *Cressé & Descarries.*

Solicitors for the respondents: *Morrison & O'Sullivan.*