1907

*Oct. 4.
*Nov. 5.

THE WINDSOR HOTEL COMPANY. (DEFENDANTS) ..... } APPELLANTS;

AND

CHARLES M. ODELL (PLAINTIFF) ... RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN REVIEW, AT MONTREAL.

Finding of jury—Questions of fact—Duty of appellate court.

Where the question was one of fact, and the jury, on evidence properly submitted to them, accepted the evidence on one side and rejected that adduced upon the other, the Supreme Court of Canada refused to disturb their findings.

APPEAL from the judgment of the Superior Court, sitting in review at Montreal, which affirmed the judgment of His Lordship, Mr. Justice Doherty, entered upon the findings of a special jury at the trial, in favour of the plaintiff, for $11,067, with costs.

The plaintiff was injured in attempting to alight from a passenger elevator in use in the appellants' hotel. He was a guest of the hotel, at the time, and was using the elevator, in the usual manner, to pass from one part of the hotel to another. At the trial, in answer to questions submitted to them, the jury found, among other things, that the accident was not due to any fault of the plaintiff, that it was due to the fault of the defendants, owing to the practice of not closing the door of the elevator before putting it in

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Maclennan and Duff JJ.

1907

WINDSOR HOTEL CO. v. ODELL.

motion, and they assessed the damages at $11,067, for which the judge entered a verdict for the plaintiff with costs.

This judgment was affirmed by the judgment appealed from.

Heneker K.C. and *Maréchal K.C.* for the appellants.

R. C. Smith K.C. and *G. H. Montgomery* for the respondent.

THE CHIEF JUSTICE.—I agree that this appeal should be dismissed with costs. I adopt the reasons given in the court below.

GIROUARD J.—I think this appeal ought to be dismissed with costs.

The question is not whether the verdict is the best one that could have been arrived at, but whether it is one which twelve reasonable men would have rendered.

It is admitted that the appellants were guilty of negligence in moving their elevator before its door was closed. They say, it is true, in answer, that Mr. Odell forced his way out when the elevator boy was in the act of closing the door and moving the elevator down, and there is some evidence to that effect. Mr. Odell swears positively the door was wide open when he attempted to move out. The jury have believed him and I am not prepared to say that their finding is unreasonable.

DAVIES J.—The question before us is not whether the verdict is, in our opinion, a right or just one, under

1907

WINDSOR HOTEL CO. v. ODELL.

Davies J.

the evidence, but simply, whether it is one which a jury could, under all the circumstances, fairly find. While, if acting as a juryman, I might not have agreed with the conclusion reached by the majority of the jury, I am not, sitting here in a court of appeal, able to say that the verdict is one which reasonable men might not fairly, under the evidence, have found.

I agree, therefore, in dismissing the appeal.

IDINGTON J.—I think this appeal should be dismissed with costs.

MACLENNAN J.—I agree to dismiss this appeal with costs.

DUFF J.—The principle which we have to apply here is, for the purposes of this case, aptly put by the language of Lord FitzGerald, delivering the judgment of the Judicial Committee, in *The Commissioner for Railways* v. *Brown*(1) at page 134;—

> Where the question is one of fact and there is evidence on both sides properly submitted to the jury, the verdict of the jury, once found, ought to stand; and the setting aside of such a verdict should be of rare and exceptional occurrence.

There is nothing rare or exceptional about this case; it is the common case of a conflict of evidence which the jury, having the witnesses before them, have resolved by accepting the story of one side and rejecting that of the other.

We could not allow this appeal without disregarding this rule and adopting a principle of decision

(1) 13 App. Cas. 133.

which would open for examination, as *res nova* in a court of appeal, every issue of fact tried and passed upon by a jury.

Appeal dismissed with costs.

Solicitors for the appellants: *Heneker & Duff.*

Solicitors for the respondent: *Brown, Montgomery & McMichael.*