

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the appeal of Jeanneret
v. Bailey, from the Supreme Court of New
South Wales; delivered May 14th, 1889.*

Present :

LORD WATSON.

LORD BRAMWELL.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

THEIR Lordships have no difficulty in holding that the judgment of the Court below discharging the rule ought not to be disturbed. The case involves questions of fact very suitable for the consideration of a jury. The statements of the witnesses upon some points are not altogether consistent; but it is obvious that, before the Appellant's steam motor with a long tramcar attached came within 30 yards of the Respondent's horse and cart, the horse had got into a condition which is variously described by the witnesses as "restive," "fractionous," "plunging about"; and one of the Appellant's own witnesses states that it was easy for anyone to see that the horse was then restive and disturbed by the tram. At that time the horse had turned across the street, and the Respondent was at its head, close to the tramway rails; and it is certain that, if the motor had been stopped before it reached the horse, the Respondent would not have been injured.

In these circumstances the jury had to consider whether the excitement of the horse, and the position of the Respondent, were visibly such that common prudence ought to have dictated to

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the driver of the motor the necessity of stopping, which he could easily have done, his own evidence being to the effect that he could have pulled up within a couple of yards. It is not for their Lordships to say what verdict they would have found if they had been in the place of the jury. But it is, in their opinion, impossible to say that the jury could not, upon the evidence before them, honestly and reasonably take a view of the facts which necessarily implied fault on the part of the driver. Under these circumstances there can be no reason for interfering with their verdict.

Their Lordships will accordingly humbly advise Her Majesty that this appeal ought to be dismissed, and the Appellant must bear the costs.