

1931

BLISS *v.* MALMBERG*Feb. 4.
*April 28.ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ALBERTA*Motor vehicles—Accident—Liability—Duty to sound horn—The Vehicles
and Highway Traffic Act, ss. 40 and 66 (1).*

APPEAL by the plaintiff appellant from the decision of the Appellate Division of the Supreme Court of Alberta (1), reversing the judgment of the trial judge, Ives J., and dismissing the appellant's action

The respondent was sued for damages arising from injuries sustained by John Douglas Bliss, a boy of the age of nine years, who, on the 12th day of November, 1927, was struck by a motor truck owned and operated by the respondent and for expenses incurred by the appellant Harold B. Bliss by reason of such injuries. The Honourable Mr. Justice Ives, at the trial, gave judgment for the appellant; but his judgment was unanimously reversed by the Appellate Division of the Supreme Court of Alberta. The trial judge found that the respondent had failed to discharge the onus cast upon him of proving no negligence under section 40 and 66 (1) of *The Vehicles and Highway Traffic Act*. The Appellate Division, even assuming that the trial judge considered that no warning had been given, and, if given, it had been insufficient, thought that the circumstances of the case were such at the time of the accident, having in mind the limited rate of speed of the truck, as to dispense with the necessity for any warning and that consequently no negligence can be attributed to the respondent and that he had discharged the onus cast upon him by the Act.

The Supreme Court of Canada was of the opinion that the respondent failed to prove that the damage did not arise through his negligence and therefore, allowed the appeal with costs, restored the judgment of the trial judge, whose assessment of damages was not found to be excessive.

Appeal allowed with costs.

A. M. Sinclair K.C. for the appellant.

S. B. Woods K.C. for the respondent.

*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Cannon JJ.

(1) (1929) 24 Alta. L.R. 334.