

FOUND BOTH PARTIES WERE NEGLIGENT

Award in Marshall-Kerrison Case—Action Against Fair Association Is Heard.

The case of James Marshall, Helen Marshall, Helen Douglas and Elizabeth Douglas against Stanley Kerrison, Jr., and Stanley Kerrison, Sr., was concluded early on Friday afternoon and the evidence given to the jury which returned a verdict shortly after the sessions opened for proceedings on Friday night. The jury found that negligence was contributory by both sides on a basis of 60-40, Kerrison being found 60 per cent. responsible and the plaintiffs 40 per cent. The claim was for \$2,000 damages as a result of the accident but the jury granted the following: James Marshall, \$400; Helen Marshall, \$150; Helen Douglas, \$150 and Elizabeth Douglas, nil.

The jury found that the accident was caused by negligence on the part of Kerrison because he had approached the intersection at too great a speed and had not paid enough attention to the Marshall car. It was also found by the jury that the plaintiff could have, by exercise of reasonable care, avoided the accident by approaching the intersection at a slower rate of speed. The first witness for the defence called in the afternoon when the case was resumed after the noon recess was Frank Clow who saw the Marshall car on Albert street and passed it near the corner of Johnson and Albert streets. Clow said he was going along Albert street between Brock and Johnson streets and wanted to turn down Johnson street but was afraid to do so on account of the great speed of the approaching Marshall car, which he declared was travelling at 35 miles an hour. When one-third way down Johnson street, after the Marshall car had passed, Clow heard the crash and went to the scene of the accident.

Mr. Cunningham in addressing the jury pointed out that it was necessary for the plaintiff to positively establish that the accident was caused by the negligence of the defendant. He referred to the fact that the evidence was very contradictory, giving examples of this in the evidence that had been taken.

Mr. Shea, in his address to the jury, made a resume of the case, dwelling on different evidence with regard to the rate of speed of the Marshall car and bringing out that something must have struck the rear of the Marshall car to cause it to swerve and turn over as it did.

His Lordship Mr. Justice Grant in addressing the jury pointed out that most of the jury cases in the last few years had been furnished by cars. He supposed that three out of five or even three out of four jury cases were about cars. Of the car, he said, was here to stay until something faster took its place and it must be reckoned with.

Ambrose Shea represented the plaintiffs and A. E. Cunningham was counsel for the defence.

Grand Jury Report.

Before proceeding with the next case on the docket, that of Thomas Smith, plaintiff, vs. The Kingston Industrial Agricultural Society, it was announced that the Grand Jury was ready to present its report and the presiding judge consented to accept it then.

The report was presented by the foreman, James Daley, and told of a thorough trip of inspection made by the members of the Grand Jury through the Jail, the Eastern Dairy School, Rockwood Hospital, The Kingston General Hospital, Orphans' Home, St. Mary's-of-the-Lake, Hotel Dieu, House of Providence and Home for the Aged. The jury found everything to be in first-class condition. The report commented upon the cleanliness of the institutions

and the jury heaped words of praise on those in charge of them. The jury took exception, however, to the poor heating system in the Court House, finding the furnaces not of sufficient heating capacity for such a large building. They also recommended a toilet and lavatory to be installed in the visiting judge's room, also better ventilation in the Court Room chambers.

Thomas Smith's Action.

Following the reception of the Grand Jury's report, the Thomas Smith vs. Kingston Industrial Agricultural Society case was proceeded with and the following jury selected: J. B. Bunt, Robert Webb, Frank Caldwell, Henry Brethwaite, Patrick Hogan, Jr., William Healey, Ernest Godfrey, Joseph Clarke, Herbert Dowker, Robert Gibson, Sr., J. E. Davidson and Daniel McGowan. W. H. Herrington appeared for the plaintiff, Thomas Smith and T. J. Rigney and Ambrose Shea for the defendant.

Plaintiff's claim was for \$10,000 damages for injuries received when a gun was fired at the Fair Grounds during the pageant held at the fair in 1924.

Before any evidence was taken, T. J. Rigney offered defence that the Kingston Industrial Agricultural Society was not an incorporated body despite the fact that it holds a yearly fair and therefore no claim could be made against it. After consultation, it was decided to go on with the evidence and at the end of that time to produce evidence to show whether or not the Kingston Industrial Agricultural Society was an incorporated body.

Dr. C. E. O'Connor, eye, ear, nose and throat specialist, was the first witness called for the plaintiff and stated that he had attended Smith and had treated him for injuries received in the accident at the Fair Grounds. His left eye, he said, was blind and without life and he could not distinguish light from darkness with the left eye. Dr. O'Connor stated that he had never examined Smith's eyes before. Dr. Ambrose Lawlor and J. E. Kane also gave evidence, practically confirming Dr. O'Connor's statements.

Col. J. N. S. Leslie, chairman of the Historical Pageant held in 1924, questioned by Mr. Herrington, said that he had made dealings with Mr. R. J. Bushell for presenting the pageant at the fair in 1924. So far as he knew, none of those taking part in the pageant had received any money for their services. He believed the Fair had got any money there was. Correspondence between witness and Mr. Bushell was produced. Witness did not know who brought the organizer here for the pageant. The idea of having the guns had been suggested by him and he had secured permission to have them placed at the fair grounds for the pageant. The R.C.H.A. had sent up the guns.

John Smith, called by Mr. Herrington, said that he was working for Herbert Orser when he got hurt. He had started to work the week before the accident occurred. Mr. Orser had said the Fair would pay Smith \$2.50 a day. He did work in connection with the pageant.

On the day of the accident he had been told that he was to help take down the canvass scenery of the pageant that night. After having helped to put a piano up in the judge's stand at the track at the fair grounds, Mr. Smith had gone over to the school fair tent on the other side of the grand-stand and was returning around the left side of the grand stand, the side nearest the stables. He went, he said, straight across the track, then along the side through a crowd of people to near the judge's stand where the accident occurred. Smith said he did not see any gun and no one had told him there was a gun there.

In reply to questions, witness stated that he did not know when he regained consciousness. He was at the Hotel Dieu Hospital for seventeen days. The bill for everything was \$300.

Mr. Smith, questioned by Mr. Rigney declared that there was a crowd back of the track. He denied that anyone had stopped him and told him that a cannon was to be fired and was not warned. He stated that he did not see any mounted men or megaphones.

It was now nearly six o'clock and court was adjourned until 7.45, the presiding judge being very anxious to get the evidence in the case last night.

Another Night Session. Fred Timms was the first witness called by Mr. Herrington in the evening session and he declared that he had been around the midway on the night in question and had come up the track and stood at the west side of the judges' stand. He did not see the gun at first because it could not be plainly seen. He was seven feet from the judges' stand and was right beside the gun. He stood there for about half an hour. He heard no warning that the gun was to be fired nor did he see anyone giving a warning. There was no indication, he said, that the gun was to be fired. He saw Smith six or seven feet west of the gun. In answer to Mr. Rigney, witness said that the carriage of the gun was not on the track. The gun was not on the track and there was no fence in front of the gun.

Percy Dowley stated that he stood between the stand and the muzzle of the gun for about ten minutes. People were warned to get away from the gun. The warning, he said, was given quite loudly and plainly. Three minutes elapsed between time of the firing of the gun and the last warning. People had crowded away from the gun as a result of this warning.

Fred Belwa, who was also present, said that he heard no warning that a gun was to be fired. Percy Potter said he stood at the south side of the grand stand when the gun went off. He neither heard nor saw warnings. There were people moving around the judges' stand but there was nobody on the track.

John Couper stood at the judges' stand for fifteen or twenty minutes and neither heard nor saw any warnings. He did not know the gun was to be fired nor did he see any men in uniform.

Mr. Rigney—"Did you see Smith before the accident happened?" Witness—"I saw Smith coming down the track."

Mr. Rigney—"Did you see who fired the gun?" Witness—"No."

Mr. Rigney—"Did you see Smith in any argument?" Witness—"No."

Mr. Rigney—"Did you see anybody else on the track?" Witness—"No."

Mrs. T. Smith, wife of the injured man, was called and she corroborated the evidence given by her husband that he had been employed by Mr. Orser and had paid her husband's wages to her. She declared that Mr. Smith had been much affected as a result of the accident.

David Saunders said he saw the cannon when he was at the grand stand side, opposite the judges' stand. He saw a man in uniform behind the gun.

Mr. Willoughby heard no warnings. Some child had said that the gun was going to be fired and he and his wife and children moved quickly away but they had not gone three feet when the cannon was fired. He said that there were people in the grand-stand and the track was not clear. He admitted that his attention was riveted on the procession in the pageant.

Jury Was Dismissed. At this juncture there was a conference between counsel and the judge and it was divulged that counsel for the plaintiff needed further evidence not available at the present moment and with the consent of Mr. Rigney, the judge consented to wait until the morning for this particular evidence and in the meantime go on with other evidence and handle the case himself without the jury. Accordingly, the jury was dismissed and the evidence was proceeded with.

Gunner Martin, of the R.C.H.A., was called and stated that he was there to help keep the crowd back. He declared that there were two men on horse-back. Smith came through from the grand-stand side on the west end. Martin said he told Smith to keep back but Smith said he was going through anyway. Martin declared that Smith would pass the gun. He was struck by the second one farther down. It was vacant in front of the grand-stand.

He said there was another horse-man but in a costume. There were some people in the grand-stand. Martin was certain that Smith was the same man who was struck that night at the Fair Grounds.

Harold Ackerley swore that he saw Smith at the Fair Grounds. He saw one man on horse-back and he moved about. Warnings were talked but he heard no one shout warnings. Ackerley was positive that the man who was injured on that night was this Thomas Smith, the plaintiff. He said Smith had come through but others who had come through beside Smith, had turned back.

Gunner Lafamme, the man who fired the gun, the discharge of which rendered Thomas Smith blind in one eye, said there were two men besides himself in uniform. The sergeant called to fire. He was behind the gun. Lafamme said he was too busy to notice if there were warnings given. He did not hear any.

Sergeant Campbell said that the last gun had been placed in position at 6.45 that night that Smith was hurt. The gun was fired about 9.40. Sergt. Campbell declared he gave the signal to Sergeant Marshall to fire "B" Battery gun. The discharge used in the second gun was less than half of blank cartridge.

Gunner Frank Manning said he was engaged in keeping back the crowd, along with another man. He said he did that from a half to three-quarters of an hour before the gun was fired.

Gunner Hughes was the last witness called. He also was engaged in patrolling. Others, as well as he, gave warnings, he said.

This concluded the evidence and a decision in the case was to be given this morning.

January 26th was the 100th anniversary of the birth of Mrs. U. S. Grant, wife of the famous Civil War veteran and president.

An electric plow which does not require an attendant is being experimented with at the College of Agriculture, Ames, Ia.

Mutual Life's Unbroken Progress \$3,796,982 Surplus Earnings in 1925 Shows Exceptional Strength of the Mutual Life of Canada. Includes a table of benefits to policyholders and a list of assets.

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POLYGAMY—UNDER THE AMERICAN FLAG! They still practice polygamy in the Southern Philippines, despite the fact that the American flag flies over the land. This photo shows a Moro chieftain named Mama, and his ten young wives.

SNAPSHOTS OF A MAN WITH A DENTIST APPOINTMENT. A series of ten comic panels showing a man's forgetfulness and procrastination leading to a dental appointment.

Before and After. A large illustration showing a woman and child on a boat, with a caption below describing their reunion after ten years.

At the left is a mother and child as they stepped off a boat at New York from Europe; at the right the same persons the next morning ready to meet the husband and father for the first time in ten years.