

Where there is evidence of negligence on the part of the defendant, although there may also be contributory negligence on the part of the plaintiff, the question is for the jury, and the case is not one for a nonsuit.

When it was established that the street-car was more than 500 feet away on a clear track when the stalling occurred, and that the street-car was fitted with a powerful head-light, the onus was shifted, and it was for the defendants to satisfy the jury that the collision was not the result of their negligence: see *Canadian Pacific R.W. Co. v. Pyne* (1919), 48 D.L.R. 243.

The appeal should be allowed with costs, and judgment should be entered for the plaintiffs in accordance with the jury's findings, with costs.

Appeal allowed.

FIRST DIVISIONAL COURT.

DECEMBER 30TH, 1920.

*GOODISON v. CROW.

Damages—Agreement for Sale of Farm—Covenant to Give Immediate Possession—Loss of Crops in Ground—Loss of Rent—Loss of Prospective Profits from Crop to be Grown—Damages for Deceit—Appeal and Cross-appeal—Variation of Judgment—Costs.

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of LATCHFORD, J., in an action to recover damages for breach of covenant and for deceit in the matter of an exchange of lands between the parties. By the judgment the plaintiff was awarded \$1,825 damages and costs of the action.

The appeal and cross-appeal were heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

R. L. Brackin, for the defendant.

O. L. Lewis, K.C., for the plaintiff.

MEREDITH, C.J.O., reading the judgment of the Court, said, after stating the facts, that the trial Judge treated the action as one simply for damages for breach of the defendant's covenant to give immediate possession of his farm. In assessing these damages, the learned Judge allowed \$850 for the loss of a crop of wheat that was in the ground when the conveyance was made and the difference between that sum and \$2,000 as the loss of the profit that the plaintiff would have made by growing on the farm, as he intended to do, sugar beets, from which