

SUTHERLAND, J.

OCTOBER 18TH, 1916.

NAIRN v. SANDWICH WINDSOR AND AMHERSTBURG
RAILWAY.

*Negligence — Street Railway — Injury to Automobile — Personal
Injuries — Contributory Negligence — Ultimate Negligence —
Findings of Jury — Damages — Costs.*

Action by the owner of an automobile for damages for personal injuries to himself and injuries to his car as the result of negligence on the part of the driver of a street car of the defendants, which ran into the rear end of the plaintiff's car, which was travelling ahead of it and in the same direction, on the railway track.

The action was tried with a jury at Sandwich, and questions were put to them and answered. They found (1) that the defendants were guilty of negligence which caused the injuries to the plaintiff and his car; (2) that the negligence was that the motor-man did not have his car under proper control for the rate of speed he was going in coming to a dangerous crossing; (3) that the plaintiff was guilty of negligence which caused or contributed to the injuries; (4) that this negligence was that the plaintiff did not take proper precaution in looking to see whether or not he could go upon the track in safety; and they assessed the damages at \$200.

T. Mercer Morton, for the plaintiff.

M. K. Cowan, K.C., and A. R. Bartlet, for the defendants.

SUTHERLAND, J., in a written judgment, said that it was difficult to determine what the jury meant as to liability by their findings, and to know how they came to fix the damages at only \$200 in the light of the evidence. The plaintiff and his chauffeur, who were the occupants of the motor car at the time of the accident, both testified that they had looked when approaching the street intersection in question and saw the track apparently clear of street cars for a reasonable distance to enable them safely to turn the corner and go out upon the track. The evidence was that the street car hit the motor car some little distance from the easterly intersection of the two streets.

In the light of the evidence given at the trial, the learned Judge was inclined to think that the effect of the answers was,