According to the latest authorities, I should have been wrong in withdrawing the case from the jury. The defence that plaintiff should have looked out for the train is one of contributory negligence, and this defence, it is now said, must be left to the jury: Morrow v. Canadian Pacific R. W. Co., 21 A. R. 149; Vallée v. Grand Trunk R. W. Co., 1 O. L. R. 224.

The motion for nonsuit must, therefore, be refused, and judgment should be entered for plaintiff in accordance with the findings of the jury with costs.

BRITTON, J. APRIL 28TH, 1905.

TRIAL.

QUEEN'S COLLEGE v. JAYNE.

Vendor and Purchaser—Contract for Purchase of Land—Specific Performance—Incomplete Contract—Disagreement as to Terms.

Action by vendors to compel specific performance of a contract by defendant for the purchase of a farm.

Plaintiffs were mortgagees in possession of the farm in question. On 28th November, 1903, plaintiffs leased the farm to defendant for 3 years from 2nd March, 1904, at a yearly rental of $500. On 26th December, 1903, plaintiffs' solicitor wrote to defendant offering to sell him the farm for $13,000, and saying that the terms of payment would be made very easy. On 29th December, 1903, defendant wrote to plaintiffs' solicitor, "I have concluded to purchase the farm at your price, $13,000." The solicitor replied, "I accept your offer of $13,000 for the Blanchard farm."

On 4th February, 1904, defendant was in Kingston and met plaintiffs' solicitor, when terms of payment were discussed, and the solicitor wrote the following as the result of their conversation: "Jayne proposes to turn over to us the cheques from the cheese factory for his milk money, beginning with June next, to be applied in payment of purchase money on his purchase of Blanchard farm. He will pay $200 this year, $300 in 1905, and $500 a year after that, he to have the privilege of paying any amount on account of his purchase money at any time; interest on amount so paid to cease on day of payment." This paper was signed by defendant.