they agreed to keep the place in repair was not proved; and much of the money was spent upon what ought probably to be classed as improvements, rather than as such repairs as would be contemplated by the parties, if they spoke of "keeping the place in repair." This expenditure must be taken into account in ascertaining what the place "cost" the defendants, or what they "had in it." On this head the defendants should be allowed $285, which, added to $2,932 paid to B., made $3,217; so that, out of the $3,800 for which the land was sold, the plaintiff ought to have $583.

The plaintiff was not entitled to payment for his services, which were rendered to the defendant G. F. Welbanks as a member of his household (they were brothers-in-law) without thought of recompense.

Judgment for the plaintiff for $583 with costs.

FOLLICK v. WABASH R.R. CO.—BRITTON, J.—NOV. 20.

Railway—Injury to Person Attempting to Cross Tracks—Accident—Absence of Actionable Negligence—Nonsuit.]—Action for damages for injuries sustained by the plaintiff by reason of an engine of the defendants running him down. The plaintiff alleged negligence of the defendants in driving the engine at too great a speed and in not stopping before reaching a level crossing where the interlocking system was not in use. The plaintiff was employed by another railway company as section foreman. When struck by the engine he was about to cross the track, not at the highway crossing, which was east of the spot where the plaintiff was injured. The action was tried with a jury at Welland. BRITTON, J., in a written judgment, said that he allowed the case to go to the jury, after reserving judgment upon a motion for a nonsuit made upon the ground that, upon the whole evidence, no actionable negligence had been shewn. The jury found for the plaintiff with $3,000 damages. The learned Judge was of opinion that the motion should prevail. The injury to the plaintiff was occasioned by a mere accident for which the defendants were not responsible, and there was no evidence that could properly be submitted to the jury to establish liability on their part. The evidence brought the case within the decision of Hanna v. Canadian Pacific R. W. Co. (1908), 11 O.W.R. 1069, 1074. Action dismissed. G. H. Pettit, for the plaintiff. R. S. Robertson, for the defendants.