

The action should be dismissed, and there should be judgment for the defendant declaring the contract of sale void and setting it aside and vacating its registration, with costs of the action and of the counterclaim.

KELLY, J.

MARCH 27TH, 1920.

HOFFMAN v. HAMILTON GRIMSBY AND BEAMSVILLE
ELECTRIC R.W. CO.

Negligence—Collision of Motor-car with Electric Street-car at Highway Crossing—Injury to Driver of Motor-car and Wife—Findings of Jury—Negligence of Motorman of Electric Car—Contributory Negligence of Driver and Owner of Motor-car—Ultimate Negligence of Motorman not Shewn—Failure of Owner and Driver to Recover—Wife not Affected by Husband's Contributory Negligence—Right of Wife to Recover—Costs.

An action by Rolph J. Hoffman and his wife, Eva Hoffman, to recover damages for injuries sustained by each of them, for the death of their son, a boy of 3½ years, and for damage to a motor-car, driven by the plaintiff Rolph J. Hoffman, all alleged to have been caused by the negligence of the defendants' motorman in the operation of a car of the defendants, which struck the car in which the plaintiffs and their sons were driving easterly on the Hamilton and Grimsby stone road, at a place where the defendants' line of railway crosses the stone road.

The action was tried with a jury at a Hamilton sittings.

M. J. O'Reilly, K.C., for the plaintiffs.

George Lynch-Staunton, K.C., and A. H. Gibson, for the defendants.

KELLY, J., in a written judgment, said that the jury, in answer to questions, found that there was negligence of the defendants, consisting of "increasing speed in vicinity of accident;" that the plaintiff Rolph J. Hoffman was guilty of contributory negligence, in that he "should have observed more keenly or stopped his car;" and that there was no ultimate negligence on the part of the defendants. The jury found no damages in respect of the death of the plaintiff's son, and assessed the plaintiff Rolph J. Hoffman's damages in other respects at \$644.55 and his wife's at \$400.

The defendants contended that, under the Motor Vehicles Act, it must be assumed that the plaintiff Eva Hoffman was liable.