

Assuming the acceptance of a judgment for the rent, the money paid into Court should be paid out to the plaintiffs, less the costs of the defendants of the appeal, which should be paid to the defendants. If neither party desired a reference, the plaintiffs should have judgment also for \$200 in full of all damages for breach of covenant, without costs; if a reference be had, the costs will be in the discretion of the Master, and judgment entered accordingly.

LATCHFORD, J., and FERGUSON, J.A., agreed with RIDDELL, J.

ROSE, J., agreed in the result, for reasons stated in writing.

Appeal allowed in part.

HIGH COURT DIVISION.

LENNOX, J.

FEBRUARY 3RD, 1919.

ONTARIO HUGHES-OWENS LIMITED v. OTTAWA
ELECTRIC R. W. CO.

Negligence—Street Railway—Collision of Street-car with Automobile—Negligence of Motorman—Negligence of Chauffeur—Findings of Jury—Evidence—Contributory Negligence—Ultimate Negligence.

Action for damages for injury to the plaintiff company's automobile in a collision with a street-car of the defendant company, in a highway, by reason of the negligence of the defendant company's motorman, as the plaintiff company alleged.

The action was first tried by SUTHERLAND, J., and a jury; at that trial there was a judgment for the plaintiff company, upon the jury's findings, for \$754.23; but that judgment was set aside and a new trial ordered, by a Divisional Court of the Appellate Division: Ontario Hughes-Owens Limited v. Ottawa Electric R.W. Co. (1917), 40 O.L.R. 614, 13 O.W.N. 156.

The second trial was before LENNOX, J., and a jury, in Ottawa. The questions put to the jury and their answers were as follows:—

(1) Were the injuries complained of caused by the negligence of one of the parties? A. Yes.

(2) Were both parties guilty of negligence causing or contributing to the accident? A. No.