

If the plaintiff became aware that the car was approaching, and was able to avoid the danger—quite obviously his duty was to avoid it, and, failing to do so, he was the author of his own damage; but this was a question for the jury, and upon them devolved the duty of ascertaining the real cause of the accident. This they have found to be the defendants' negligence, not only by the answer to the 5th but also by the answer to the 1st question.

The appeal should be dismissed with costs.

LATCHFORD, J.:—I agree.

FALCONBRIDGE, C.J.:—I agree in the result.

McCALL MANUFACTURING CO. OF NEW YORK v. HICKSON—LATCHFORD, J.—MARCH 3.

Contract—Procurement by Fraud—Misrepresentation of Agent—Sale of Patterns—Notice of Cancellation of Contract—Return of Patterns.]—Action to recover \$348.02 for goods sold and delivered and \$150 as liquidated damages for breach of contract. Both claims were made under a written agreement dated the 4th November, 1907. At that time the defendant was carrying on business as a milliner and dealer in fancy goods at the town of Arnprior, and was agent for the sale of paper patterns made by Butterick & Co., business rivals of the plaintiffs. During the currency of her contract with Butterick & Co., the defendant was bound not to sell any but Butterick patterns. The plaintiffs' agent, one Moss, represented to the defendant, and she at the time believed, that the Butterick contract expired in August, 1908, and that thereafter she would be free to sell the plaintiffs' patterns, and she, therefore, signed the agreement with the plaintiffs. As a fact the Butterick agreement was in force until August, 1908, and thereafter until terminated by three months' notice in writing. The learned Judge finds that Moss made the representation with a form of the Butterick contract before him and with knowledge that his representation was false, and that the defendant relied upon Moss's representation and was thereby induced to sign the agreement with the plaintiffs; and upon this and other grounds (set out in a written opinion) the action failed: *Ontario Ladies College v. Kendry*, 10 O.L.R. 324; *Long v. Smith*, ante 631. The learned Judge held,