

FIRST DIVISIONAL COURT.

MAY 5TH, 1916.

KIDD v. LEA.

Negligence—Collision of Motor Vehicles on Highway—Municipal By-law—Rule of Road—Ultimate Negligence—No Reasonable Evidence to Go to Jury—Dismissal of Action by Appellate Court.

Appeal by the defendant from the judgment of one of the Judges of the County Court of the County of York, in an action in that Court, tried with a jury, in favour of the plaintiff.

The action was brought to recover damages for injury to the plaintiff in a collision at the corner of Avenue road and Heath street, in the city of Toronto, between a motor vehicle driven by the plaintiff and the defendant's motor vehicle, driven by one McIlroy.

The case was submitted to the jury without questions, and they found generally in favour of the plaintiff, and assessed the damages at \$500, for which sum and costs judgment was pronounced in favour of the plaintiff.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

D. Inglis Grant, for the appellant.

J. T. Richardson, for the plaintiff, respondent.

GARROW, J.A., reading the judgment of the Court, referred to a city by-law passed on the 23rd June, 1911, enacting (clause vii.) that "vehicles shall not stop at or obstruct crossings, and shall reduce their speed at crossings. . . . Vehicles going north and south shall have the right of way over those going east and west"

The plaintiff admitted that he was aware of the by-law. He was driving along Heath street, an east and west street, while the defendant's motor vehicle was being driven along Avenue road, a north and south street, so that the defendant's vehicle had the right of way. It was daylight; each saw the other approaching the crossing; the plaintiff admitted that he was going at twelve miles an hour at least. The plaintiff said that he saw McIlroy apply the brakes some thirty feet above the crossing; the plaintiff applied no brake, but came along at his full speed in the hope of getting past. The plaintiff's duty was to have moderated his speed as he approached the crossing; that duty he totally neglected, with the result that he brought upon himself the consequences which followed. Ultimate negligence on the part of McIlroy was