

him, but to the respondent, and there is no evidence from which it can properly be found that the appellant could have got more than \$1,100 for the old car. The price asked by the appellant was \$1,300, which was enough to pay him all he was entitled to receive, and to leave a surplus of \$200 to go to the respondent. There is nothing to indicate that the appellant was not acting in good faith, and I do not see what possible motive he could have had in asking \$1,300 except to benefit the respondent.

From what was said by the learned Judge at the close of the argument at the trial, and from the judgment which he subsequently directed to be entered, it would appear that he must have come to the conclusion that, according to the terms of the agreement, the respondent was entitled to all that the appellant could get for the old car in excess of \$1,000; and that, as he could have got for it from O'Connor \$1,100, he was liable to pay the difference between the two sums to the respondent.

It is clear, we think, that the learned Judge erred in his interpretation of the agreement. What was to be paid to the respondent was all that the appellant could get for the old car over \$1,050, less \$50; that does not mean over \$1,000, but the deduction of \$50 is to be made from the excess over \$1,050; and, indeed, that was not disputed upon the argument before us.

The result is, that the appeal must be allowed with costs, and the judgment on the counterclaim reversed, and, in lieu of it, judgment must be entered dismissing the counterclaim with costs.

The dismissal should, however, be without prejudice to the right, if any, of the respondent to sue as he may be advised in respect of any dealing by the appellant with the old car subsequent to the offer of purchase made by O'Connor.

APRIL 6TH, 1914.

BROWN v. TORONTO R.W. CO.

Street Railway—Injury to Passenger Alighting from Car—Negligence—Contributory Negligence—Findings of Jury—Form of Question Left to Jury—Evidence.

Appeal by the plaintiffs, husband and wife, from the judgment of one of the Junior Judges of the County Court of the County of York, after the trial of an action in that Court, with