

I. F. Hellmuth, K.C., for the defendants, appellants.
Sir George Gibbons, K.C., for the plaintiff, respondent.

HON. SIR JOHN BOYD, C.:—I think this case could not properly have been withdrawn from the jury, and I am not prepared to dissent from the conclusion reached by the jury and favourably viewed and acted upon by the Chief Justice. The situation of the plaintiff at the rear of the car from which she had got out, with a car approaching her on the same track, coupled with the warning given by one on the car she had left to look out for the car; may well have flurried and perturbed her, as the witnesses say, and have led her, in the face of a strong wind, to lower her head and hurry across the track to her place of destination, not observing the coming upon her on the track she was crossing of the other car which was passing the stationary car. Upon this state of facts the jury may have rightly absolved from contributory negligence: see *Wright v. Grand Trunk Rw. Co.*, 12 O. L. R. 116, 7 O. W. R. 636.

On the question of negligence by the company, there was also evidence which ought not to have been withdrawn from the jury. The reception of this evidence by an expert from Hamilton was not objected to, and the effect of it was to indicate that sufficient caution was not observed in approaching this place of crossing the street, at which the car carrying the plaintiff stopped regularly for the discharge and reception of passengers. There was proved to be a habit or custom of those leaving the cars to cross the tracks at that point to get to Albert Street, and this practice was well known to the company. If the view was obscured by the stationary car to the conductor of the oncoming car, that was a strong reason for slackening the speed and exercising conformable caution in the view of probable danger at that crossing. And the jury have found negligence in running the south-bound car at too high a rate of speed when the north-bound car was standing and passengers getting off.

The *Brill Case*, 13 O. W. R. 113, is distinguishable from this in that a duty was cast on the car approaching the place of crossing taken by the passengers for Albert Street to go slow while the passengers were being discharged.

I would affirm the judgment with costs.

HON. MR. JUSTICE TEETZEL and HON. MR. JUSTICE KELLY, concurred.