

DENISON v. E. W. GILLETT CO. LIMITED—LENNOX, J.—FEB. 14.

Contract—Promise to Pay for Services of Clerk of Works—Evidence—Architect—Finding of Fact.]—Action by architects to recover from the defendants \$1,100 alleged to have been paid by the plaintiffs at the defendants' request for the services of a clerk of works or superintendent of the building of a new factory erected by the defendants. The learned Judge finds, upon conflicting evidence, that the defendants' manager instructed the plaintiff Denison to engage a clerk of works for the defendants and agreed that the defendants would bear the expense; and holds that the defendants are liable. Judgment for the plaintiffs for \$1,100 with interest from the 22nd November, 1912, and the costs of the action. Gordon Waldron, for the plaintiffs. G. M. Clark, for the defendants.

ROSE v. TORONTO R.W. CO.—BRITTON, J.—FEB. 14.

Negligence—Street Railways—Collision—Injury to Passenger—Evidence of Injury—Conduct of Injured Person—Finding of Fact—Damages.]—Action by a dental surgeon to recover damages for injuries alleged to have been received while he was a passenger in a car of the defendants by reason of a collision with another car, at the corner of Carlton and Parliament streets, in the city of Toronto. The action was first tried before Boyd, C., and a jury. At that trial, there was a verdict for the plaintiff for \$750. That verdict was set aside by a Divisional Court, and a new trial without a jury was ordered. The second trial was before BRITTON, J., without a jury. The defendants admitted negligence, but said that the plaintiff was not really injured in the collision; or, if he was injured, the real cause of his injury was in doubt; and, at any rate, he was not injured in the collision to the extent alleged. The collision was on the 28th May, 1911. On the 21st June, 1911, the plaintiff was injured by being thrown from a bicycle, and for this injury he received indemnity under an accident insurance policy. For his alleged injury in the collision he did not seek indemnity under the insurance policy; and he made no claim against the defendants until after the bicycle accident. This action was begun on the 30th April, 1912. Notwithstanding the plaintiff's conduct, the learned Judge finds that he was in fact injured by the collision of the 28th May, 1911, and that he is entitled to