sive applications of the brakes, in the manner which he thought the best, and as he on this occasion applied them, the car should be stopped, when going as it was on this occasion, in a distance of about 180 feet, whilst, if applied with full force, it should stopped in about 120 feet.

So that, if the jury found, as they well might, upon the whole evidence, that the distance run between first seeing the danger and running the man down was over 180 feet, the driver not only failed to exonerate, but condemned, himself; because not only did he say in effect that he should immediately have done all in his power to stop the car, but also that he actually did all in his power to stop it by the most effectual means.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT. OCTOBER 6TH, 1916.

BULL v. STEWART.

Contract—Building Contract—Action by Contractor for Amount Due upon Contract—Rulings of Architect—Cross-claim by Defendant for Damages for Bad Work—Court not Precluded from Determining Claim on Merits—Assessment of Damages—Money Paid into Court—Set-off—Costs.

Appeal by the defendant from the judgment of LATCHFORD, J., 10 O.W.N. 235.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE and HODGINS, JJ.A., and LENNOX, J.

W. A. J. Bell, K.C., for the appellant.

H. S. White, for the plaintiff, respondent.

LENNOX, J., reading the judgment of the Court, said that the defendant's appeal was only as to the disallowance of his cross-claim for damages; it seemed that the trial Judge was fully satisfied as to the right of the defendant, upon the merits, to recover damages; and a careful perusal of the evidence and consideration of the appeal led to the conclusion that the defendant had sustained actual damage by the negligent and improper execution of the plaintiff's contract. There was evidence to shew that, in respect to the chief grounds of complaint, and without any reference to the delay, the damages amounted to $1,000 or more.