As to failure to give warning of the approach of the car, the trial Judge thought there was no duty to give warning; but that was a question of fact, and, in the circumstances of this case, one for the jury.

As to failure to avoid running into the horse, the trial Judge said that there was no evidence that the driver of the car had time or space in which to stop the car before the collision. But such a conclusion could be reached only by discarding the evidence of each of the three witnesses, and that was a thing quite beyond the Judge's province.

The question of contributory negligence was likewise one for the jury. If they believed the story of the driver of the sleigh, he was not guilty of any negligence. Whether he should be believed or not was a question for the jury; and even if they had not believed him and had found him guilty of negligence, they might yet have very well found, upon the evidence of the bystander, that, notwithstanding the driver's negligence, the defendants might, by the exercise of ordinary care, have avoided the injury done.

The appeal should be allowed with costs, and judgment should be entered for the plaintiff for $100, the sum at which his damages were assessed by the jury, with costs of action.

The other members of the Court agreed in the result; written reasons were given by RIDDELL, J., and also by ROSE, J.

Appeal allowed.

SECOND DIVISIONAL COURT. JUNE 8TH, 1917.

TORONTO SUBURBAN R.W. CO. v. BEARDMORE.

Contract—Electric Railway—Agreement to Build through Yard of Tanning Company—Consideration—Right to Maintain Railway Constructed without Objection—Validity of Agreement—Authority of Managing Director of Company—Evidence—Corroboration—Evidence Act, R.S.O. 1914 ch. 76, sec. 12.

Appeal by the defendants from the judgment of BRITTON, J., ante 214.