

devise, what course should the executor pursue?" The learned Judge answered this by saying that if the devisees and executors did nothing in the meantime, the land would be vested in the devisees at the end of three years. If they renounced or refused, the executors could obtain the assistance of the Court in disposing of the land and making provision for the money charged upon it.

Order declaring accordingly; costs of all parties out of the estate—on a solicitor and client basis to the executor.

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FALCONBRIDGE, C.J.K.B.

APRIL 9TH, 1918.

MOORE v. NIAGARA ST. CATHARINES AND TORONTO  
R.W. CO.

*Negligence—Collision between Automobile and Street-car—Negligence of Street Railway Company—Evidence—Excessive Speed—Failure to Sound Bell or Whistle—Contributory Negligence—Ultimate Negligence.*

Action for damages for injury to the plaintiffs' automobile by collision with a street-car of the defendants. The plaintiffs alleged negligence on the part of the defendants' servants operating the street-car.

The action was tried without a jury at St. Catharines.

A. C. Kingstone and F. E. Hetherington, for the plaintiffs.

A. J. Reid, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that he preferred the evidence of the plaintiffs' witnesses as to the high rate of speed of the defendants' car, and found also that the whistle was not sounded—admittedly no bell was rung.

Mr. Rutherford's measurements and estimates of the distance at which the plaintiff Darwin Moore could and ought to have seen the approaching street-car were accepted by the plaintiffs; and the Chief Justice visited the locus, accompanied by both counsel. The result was that he found that Darwin Moore was guilty of contributory negligence, disentitling the plaintiffs to succeed, in attempting deliberately to cross the track, in front of the street-car.

No case of ultimate negligence on the part of the defendants was made out.