

that, though the plaintiff was guilty, in the opinion of the jury, of some initial negligence in going on the track in front of the car without taking some further precautions, the motorman, not having his car under proper control, having regard to the rate of speed at which the street car was going, was guilty of the ultimate negligence causing the accident.

With some hesitation, the learned Judge directed judgment to be entered for the plaintiff on the findings for the \$200.

As to costs, the plaintiff might, having regard to his own personal injuries and the incidental expenses and loss naturally flowing therefrom, in addition to the damage to his motor car, reasonably have expected a considerably larger verdict. In the circumstances, the learned Judge fixed the costs to the plaintiff as against the defendants at \$200 without set-off.

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BALL V. WINTERS—FALCONBRIDGE, C.J.K.B.—OCT. 16.

*Master and Servant—Claim for Arrears of Wages—Promise to Increase Wages—Evidence—Failure to Establish Claim.*—Action for arrears of salary. The plaintiff alleged that, on his submitting to a reduction in salary, the defendant promised him that he would make it up to him when he had a "winning season," and on another occasion, "when we get a good time I'll make it all up to you." The defendant stated that all that he ever promised was to put the salary back (to the old figure) as soon as times got better. The action was tried without a jury at Toronto. The learned Chief Justice, in a written judgment, said that not only did the plaintiff not discharge himself of the onus of proof, but the preponderance of testimony was against him. A striking example was the curious, isolated memorandum in his little book—the statement therein made was flatly contradicted by two of three persons mentioned, and the third one did not hear. When his resignation was requested, he wrote a letter in which he acknowledged receipt of \$70 salary, and said nothing about this claim. Action dismissed with costs. R. T. Harding and W. A. Henderson, for the plaintiff. V. H. Hattin, for the defendant.