

The defendant should have judgment upon his counterclaim for \$67.75, the balance of his account, which was substantially proved at the trial.

The plaintiff should have costs, fixed at \$75, against the defendant; and there should be no costs of the counterclaim to either party.

The amount of the defendant's judgment is to be set off pro tanto against the amount of the plaintiff's judgment.

The car should be returned in as good condition as it was when the action was commenced. In default of the defendant returning the car and paying the amount found against him within 10 days, there should be judgment for the plaintiff for the value of the car, placed at \$800, less \$67.75, and with costs payable by the defendant to the plaintiff.

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SUTHERLAND, J.

JULY 18TH, 1919.

ELLIOTT v. HEWITSON.

*Water—Obstruction of Flow of Natural Watercourse by Building of Tunnel—Flooding of Neighbour's Land—Cause of—Evidence—Extraordinary Freshet.*

Action for damages to the plaintiff's land and buildings and crops by flooding.

The action was tried without a jury at Brampton.

F. W. Wegenast and C. E. H. Freeman, for the plaintiff.

G. W. Mason and A. G. Davis, for the defendant.

SUTHERLAND, J., in a written judgment, said that the plaintiff was a florist; in 1913 he bought lots 30 and 31 on the north side of Market street, in the town of Brampton. A small natural watercourse, after crossing Joseph street, in the town, ran through the plaintiff's land in a south-easterly direction to a point in the northerly limit of Market street, where it crossed that street, under a bridge, and continued for several hundred feet to where it crossed Church street, under another bridge, and then turned southerly. One Williams, the owner of land on the south side of Market street, in or about April, 1914, constructed a tunnel throughout the full width of his property from Market street to Church street, clearing out the bed of the watercourse for that purpose. The defendant afterwards became the owner of Williams's land. After the making of the tunnel, the plaintiff built