

1905

\*Dec. 7,

9, 11.

\*Dec. 22.

ANTHONY J. MADER (PLAINTIFF) .. APPELLANT;

AND

THE HALIFAX ELECTRIC TRAM-  
 WAY COMPANY (DEFENDANTS) .. } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Negligence—Trial—Finding of jury—Exercise of statutory privilege.*

Where on the trial of an action based on negligence questions are submitted to the jury they should be asked specifically to find what was the negligence of the defendants which caused the injury; general findings of negligence will not support a verdict unless the same is shewn to be the direct cause of the injury.

Where a street car company has by its charter privileges in regard to the removal of snow from its tracks and the city engineer is given power to determine the condition in which the highway shall be left after a snow storm a duty is cast upon the company to exercise its privilege in the first instance in a reasonable and proper way and without negligence.

**A**PPEAL from a decision of the Supreme Court of Nova Scotia reversing the judgment at the trial in favour of the plaintiff and ordering a new trial.

The plaintiff is a physician residing and practising in the City of Halifax and enjoying an income from his practice of about \$10,000 per annum. The respondent is a company operating an electric tramway in said city. The action is brought to recover damages for injuries received by appellant on the 15th of February, 1904, by reason of being thrown out of his sleigh in crossing respondents' track on Cunard

---

\*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Idington and Maclellan JJ.

Street in said city. The writ was issued on the 27th day of June, 1904.

At the time of the accident there was considerable snow on the street, the deep snow having been cleared by respondents of their track, leaving steep banks on each side.

The rules in the schedule to respondents' Act of incorporation (Nova Scotia statutes, 1895, ch. 107) are by the Act made part of same and Rule 9 is as follows:

"The company may remove snow and ice from its tracks, or any portion of them, to enable it to operate its cars, provided, however, that in case said snow and ice shall be removed from its track, it shall be its duty to level it to a uniform depth to be determined by the city engineer, and to such a distance each side of the track as the said engineer shall direct, or to remove from the street all snow and ice disturbed, ploughed, or thrown out by the plough, leveller or tools of the company within forty-eight hours of the fall or disturbance of said snow or ice, if the city engineer shall direct."

The action was tried at Halifax before the judge in equity (Mr. Justice Graham), with a jury, on the 21st and 22nd days of November, 1904. The questions submitted to the jury and their answers thereto are as follows:

1. Q. Was the accident caused by snow removed by defendant company from its track and left on the street without being levelled in accordance with a determination of the city engineer? A. Yes.

2. Q. Had the snow thrown from the defendants' track at the crossing in question been removed and levelled by the defendant company to the satisfaction

1905  
MADEB  
v.  
HALIFAX  
ELECTRIC  
TRAMWAY  
Co.  
—

1905  
 MADER  
 v.  
 HALIFAX  
 ELECTRIC  
 TRAMWAY  
 Co.

of the city engineer at the time of the accident? A. No.

3. Q. Did the defendant company exercise reasonable care in regard to the condition in which it left the street at the crossing in question when disturbing snow to clear its track? A. No.

4. Q. Other than the amount of a compensation for the service of the medical practitioners at what sum do you estimate the damages? A. Seven thousand, one hundred and twenty-two dollars and forty cents.

5. Q. What sum do you allow as a reasonable compensation for the services of the medical practitioners? A. (\$250.00) Two hundred and fifty dollars.

Counsel for the respondent moved on the trial after the verdict was rendered for judgment irrespective of the findings, but the learned trial judge decided that appellant was entitled to judgment for the damages assessed (\$7,342.40) and costs.

The respondents moved for a new trial and also appealed from the decision of the trial judge refusing to enter judgment for respondent.

The motion and appeal were heard by a court consisting of Meagher, Fraser and Russell JJ., and the decision of the majority of the court was read by Russell J., and was to the effect that the appeal be dismissed, but the motion for new trial allowed and all the findings of the jury set aside. Meagher J. dissented from the decision on the motion.

From the judgment ordering a new trial the present appeal is asserted. The defendants took a cross-appeal claiming a nonsuit as moved for in the court below.

*Borden K.C.* and *W. B. A. Ritchie K.C.* for the appellant.

*Newcombe K.C.* and *Mellish K.C.* for the respondents.

1905  
MADEB  
v.  
HALIFAX  
ELECTRIC  
TRAMWAY  
Co.  
Davies J.

The judgment of the court was delivered by

DAVIES J.—We are all of the opinion that this appeal should be dismissed. The Supreme Court of Nova Scotia set aside the findings of the jury and directed a new trial to be had, and in view of that I will abstain from making any remarks upon the case or the evidence at the former trial which could possibly prejudice either party.

The trial judge directed judgment to be entered upon the findings of the jury. He did not profess to supplement their findings by any additional finding of fact of his own. We are, therefore, relieved from considering the question raised at the argument whether he could under the "Judicature Act of Nova Scotia," in a case such as this, where a jury had been applied for and granted and specific questions put to them, supplement their findings on these questions by findings of his own.

I think the first question, in the form in which it was put, open to the criticism passed upon it by Russell J. in delivering the judgment of the court, and that it might well have misled the jury. I think also that the third question and answer are fatally defective because they do not shew any necessary connection between the general negligence found by the jury and the plaintiff's accident. Nor do I think that any such connection could be fairly and necessarily inferred from all the findings together.

It is elementary law that a defendant cannot be

1905  
 MADEB  
 v.  
 HALIFAX  
 ELECTRIC  
 TRAMWAY  
 Co.  
 Davies J.

held liable for any act of negligence he may have been guilty of unless such negligence be the direct and proximate cause of the plaintiff's injury.

In a case such as this the jury should be asked specifically to state what the negligence of the defendant company was which caused the plaintiff's injury. Mere general findings of negligence, unless such negligence is shewn and found to be the direct and proximate cause of the injuries complained of, are quite insufficient to support a judgment.

The defendant company has the statutory right or privilege of removing snow and ice from its tracks to enable it to operate its cars, and Rule 9, which is comprised together with other rules in a schedule attached to and made part of the company's charter, gives the city engineer full power to determine whether the snow so removed from the car tracks shall be taken away from the street altogether or levelled to a uniform depth for such a distance each side of the track as the engineer may determine.

But apart altogether from this rule, but at the same time not inconsistent with it, there is a duty cast by law upon the Electric Company to carry out their statutory privilege in the first instance in a reasonable and proper way, and without negligence. If after or during a snow storm or at any time they remove snow and ice from their track and throw it upon the part of the highway adjoining the track in a careless and negligent way, or leave it piled or heaped or placed upon the highway in a negligent way or manner, and an accident is thereby caused to any person lawfully using the highway the company would be clearly liable. This, of course, would be subject to proof of contributory negligence on the part of the injured person and the finding that their negligence in the

way and manner of placing the snow and ice upon the roadway was the direct and proximate cause of the injury. This is a matter entirely apart from any determination of the engineer as respects the uniform levelling of the snow and ice or its entire removal.

The questions that naturally arise in this case are: Was there such negligence as I have spoken of, and was it the direct cause of the plaintiff's injuries? and also, in case these questions are found in the negative: Did the engineer come to a determination with reference to the disposition of the snow and ice on this roadway in question and did he communicate it to the company? If so, did the company carry out his orders in a reasonable, careful and proper way? If not, in what respect did they fail to obey the orders or negligently carry them out, and was this failure or negligence the direct cause of plaintiff's injuries?

If the dangerous condition of the street at the time of the accident arose from other causes than the negligence of the defendant company, such, for instance, as the street traffic in changing climatic conditions causing ridges of snow and ice, or the action of the adjoining householders in throwing snow and ice from the sidewalk into the street, of course the company could not be held liable.

These are questions a jury is peculiarly qualified to answer and I have no doubt, with the experience gained in the first trial, questions will be framed in such a way as to enable a satisfactory and final disposition of the case to be made.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *Henry C. Borden.*

Solicitor for the respondents: *W. H. Fulton.*