

CALPER v. EDMONTON, DUNVEGAN & BRITISH
COLUMBIA RY. CO. AND OTHER RAILWAY

1923

*May 4, 7.
*Oct. 9.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
COURT OF ALBERTA

*Negligence—Railways—Employee operating speeder—Collision with rail-
way velocipede.*

APPEAL from the decision of the Appellate Division of the Supreme Court of Alberta (1) reversing the judgment of the trial judge, Walsh J. (2), and dismissing the appellant's action.

A railway employee, while operating a speeder over the "joint section" of the two respondent companies, was killed in a collision with a railway velocipede owned by one of the respondents and operated by an employee on the joint section. In an action on behalf of deceased's dependents, the trial judge gave judgment for damages, holding that the collision was caused by the negligence of the velocipede driver and that although deceased had been negligent his negligence did not contribute to the accident. The Appellate Division reversed this decision, holding that the velocipede driver was not negligent and even if he were, the highest ground appellants could take was that the accident was the result of the joint negligence of both, and appellants therefore could not recover.

The Supreme Court of Canada, after hearing counsel and reserving judgment, dismissed the appeal, the court being equally divided.

Appeal dismissed.

Lafleur K.C. and *Van Allen* for the appellants.

Johnstone K.C. and *Parlee K.C.* (*Geo. F. Macdonnell* with them) for the respondents.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.