

1918
 *Nov. 6
 *Nov. 18

DAVIE v. NOVA SCOTIA TRAMWAYS AND
 POWER CO.

ON APPEAL FROM THE SUPREME COURT OF NOVA
 SCOTIA.

Negligence—Tramway—Driving team across track—Contributory negligence.

APPEAL from a decision of the Supreme Court of Nova Scotia(1), reversing the judgment at the trial in favour of the plaintiff.

The plaintiff's teamster was driving a load up a hill at the top of which was a street railway track. On reaching this track he attempted to cross when a car was approaching and one of his horses was struck and had to be shot. In an action for the value of the horse the evidence was that the teamster had an assistant and material for blocking the wagon on the hill; that the motorman had thrown on the reverse power but the car skidded, which could have been prevented by sand but it could not have been applied without losing control for a time of the driving apparatus.

The trial judge held the Electric Company liable. His judgment was reversed by the full court and the action dismissed.

The Supreme Court of Canada, after hearing counsel, reserved judgment and, on a subsequent day, dismissed the appeal, Anglin J. dissenting.

Appeal dismissed with costs.

G. F. Macdonnell for the appellant.

Jenks K.C. for the respondent.

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