

1907

*Nov. 25, 26.

SYDNEY AND GLACE BAY RAILWAY CO.
v. LOTT.

Operation of tramway—Negligence—Injury to infant—Reckless running of car.

APPEAL from the judgment of the Supreme Court of Nova Scotia (1) reversing the judgment of Meagher J., at the trial, and maintaining the plaintiff's (respondent's) action with costs.

Upon seeing a child (aged one year and eleven months) approaching the tracks, the motorman sounded the whistle of the car he was driving; the child stopped for a moment and looked towards the car; the motorman then applied full speed without waiting to see whether the child retreated or making any effort to remove it from the dangerous position; the child moved quickly towards the tracks, was struck by the car and received the injuries for which damages were claimed by the action. By the judgment appealed from, it was held that the conduct of the motorman was recklessness for which the company was liable, that failure to take proper precautions to avert injury to the child was not to be excused by the alleged necessity of complying with the time-table and preventing delay to passengers and that the failure of the company to provide its car with a fender was evidence of negligence.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Duff JJ.

After hearing counsel on behalf of the appellants and without calling upon counsel for the respondent, the Supreme Court of Canada dismissed the appeal with costs.

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Appeal dismissed with costs.

Mellish K.C. for the appellants.

W. B. A. Ritchie K.C. and *Tobin* for the respondent.
