

On the 15th June, 1914, the respondent was employed by a purchaser of gravel to haul it from the appellant's premises, and the purchaser employed a teamster named Lesperance to drive the horses while engaged in that work. Lesperance had been engaged all that summer in hauling gravel from the appellant's premises, and was well acquainted with the locality and the local conditions and the way in which the cable was operated in pulling waggons up the hill. He had already drawn five loads on that day, and had gone for the sixth at between half-past four and a quarter to five o'clock in the afternoon. The waggon having been loaded, the cable was attached to the reach of it, and the waggon was pulled up the hill. The account given by Lesperance . . . at the trial was: that the horses came up the hill on a trot; that looking to the east there was nothing to obstruct his view, but that the view to the west was obstructed . . . ; that he was watching his horses and looking out to the east for the street cars, and saw none coming from that direction; that when he got to the top of the hill he saw a street car coming from the west, and endeavoured to make a short turn, but, as he said, "the car got" him "before" he "made the hill;" that, when the cable dropped off the back of the waggon, his horses were "right on the street car track;" that he had partly succeeded in turning his horses when one of them was struck by the car; that, if he had seen the car sooner, he could not have stopped his horses, on account of the rate at which he was being "shoved;" that when he saw the car it was about 100 feet away and was coming "quite fast;" that he had never met with an accident before, although the cable on all previous occasions had been operated as it was being operated at the time of the accident; that sixty or seventy other teams were drawing out sand or gravel on the day of the accident, and that some of them were pulled up the hill while he was waiting for his turn to come.

The action is brought to recover damages for injury done to the horse by the street car colliding with it; and in his pleadings the respondent alleges that his waggon was drawn "swiftly up the incline," and that the collision occurred through the negligence of the railway company in not stopping the car in time to avoid the collision, and through the negligence of the appellant or its servants in operating the engine and cable.

The jury found, in answer to questions, that the accident happened by reason of the negligence of the appellant; that its negligence consisted "in not having a watchman at the top of