

MARCH 15TH, 1915.

KEECH v. SANDWICH WINDSOR AND AMHERSTBURG
R.W. CO.

*Negligence—Injury to Horse by Collision with Street Car—
Negligent Operation of Engine and Cable—Findings of
Jury—Duty Owing to Invitee—Patent Danger—Voluntary
Assumption of Risk.*

Appeal by the defendant the Caldwell Sand and Gravel Company from the judgment of the Senior Judge of the County Court of the County of Essex, in favour of the plaintiff against the appellant company, upon the findings of a jury, in an action to recover damages for injury to a horse.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

D. L. McCarthy, K.C., for the appellant company.

H. E. Rose, K.C., for the plaintiff, respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The appellant company is a dealer in gravel and sand, and its business premises abut on Sandwich street west, in the city of Windsor. The ascent from them to the street is very steep, so steep that a pair of horses cannot draw up it a loaded waggon, and the company has provided, as a means for pulling loaded waggons up the hill, a cable which is operated by means of a steam engine on the level ground; the modus operandi being that the cable is hooked on to the reach of the waggon, which is then pulled up the hill by the cable being wound up. The horses walk one on each side of the cable, and at a short distance from the crest of the hill the power is shut off, and the cable then becomes automatically detached from the reach. At this point there is a pulley around which the cable passes, placed at the distance of 19 feet from the nearest rail of the track of the defendant railway company. The length of a waggon and horses is said to be about 22 feet; and, when the cable drops from the reach, the horses' heads, if they are not turned, are a little over that rail. From the pulley to the street the ground rises a little, and the horses have there "a little stiff pull." This appliance was provided for the purpose of the appellant's business, but persons who purchased sand or gravel from the appellant were permitted to use it for hauling their laden vehicles up the hill.