

## REPORTS AND NOTES OF CASES.

## Dominion of Canada.

## SUPREME COURT.

Ont.] BRENNER v. TORONTO RLY. CO. [Oct. 6.  
*Negligence—Street railway—Rules of company—Charge of judge—Contributory negligence.*

A rule of the Toronto Rly. Co. provides that "when approaching crossings and crowded places where there is a possibility of accidents the speed must be reduced and the car kept carefully under control. Go very slowly over all curves, switches and intersections; never faster than three miles an hour. . . ." A girl on the south side of Queen Street wished to cross to University Avenue, which reaches, but does not cross, Queen. She saw a car coming along the latter street from the east, but thought she had time to cross, but was struck and severely injured. On the trial of an action for damages the judge in his charge said: "It is not a question, gentlemen of the jury, as to the motorman's duty under the rule, it is a question of what is reasonable for him to do." The jury found that defendants were not guilty of negligence; that plaintiff by the exercise of reasonable care could have avoided the injury; and that she failed to exercise such care by not taking proper precautions before crossing. The action was dismissed at the trial; a Divisional Court ordered a new trial on the ground that the judge had misdirected the jury in withdrawing from their consideration the rules of the company. The Court of Appeal restored the judgment at the trial.

*Held*, affirming the judgment of the Court of Appeal (15 O.L.R. 195) which set aside the order of the Divisional Court for a new trial (13 O.L.R. 423), Idington, J., dissenting, that the action was properly dismissed.

*Held*, per GIROUARD and DUFF, JJ.—The judge's charge was open to objection, but as under the findings of the jury and the evidence plaintiff could not possibly recover, a new trial should be refused.

Per DAVIES, J.—There was no misdirection. The jury were not led to believe that the rules were not to be considered, but only that they should be the standard as to what was or was not negligence, which question should be decided on the facts proved.