

used only as a site for a detached brick or stone dwelling-house, to cost at least two thousand dollars, etc."

*Held*, that this stipulation constituted a covenant.

*Held*, also, reversing the judgment of the Appellate Division (28 O.L.R. 154) and restoring that of the Divisional Court (27 O.L.R. 87), FITZPATRICK, C.J., and DUFF, J., dissenting, that an apartment house intended for occupation by several families was not a "detached dwelling-house" within its meaning.

Appeal allowed with costs.

*Glyn Osler* and *J. H. Cooke*, for appellant. *J. M. Godfrey*, for respondent.

[Ont.] LONG v. TORONTO RAILWAY CO. [June 19.

*Negligence—Electric railway—Duty of motorman—Contributory negligence—Reasonable care.*

L. started to cross a street traversed by an electric railway, and proceeded in a north-westerly direction, with his head down and apparently unconscious of his surroundings. A car was coming from the east, and the motorman saw him when he left the curb at a distance of about fifty yards. Twenty yards further on he threw off the power, and, when L., still abstracted, crossed the devil-strip and stepped on the track, reversed, being then about ten feet from him. The fender struck him before he crossed, and he received injuries causing his death. On the trial of an action by his widow, the jury found that the motorman was negligent in not having his car under proper control, that L. was negligent in not looking out for the car, but that the motorman could, notwithstanding, have avoided the accident by the exercise of reasonable care. A majority of them found, also, that L.'s negligence did not continue up to the moment of impact.

*Held*, DAVIES and ANGLIN, JJ., dissenting, that the jury were entitled to find as they did; that when the motorman first saw L. he should have realized that he might attempt to cross the track, and it was his duty, then, to have the car under control; and that his failure to do so was the direct and proximate cause of the accident, for which the railway company was liable.

*Held*, per DAVIES, J.: The motorman was not guilty of negligence prior to the negligence of L., which consisted in stepping on the track when the car was near, and it was then too late to prevent the accident.

*Held*, per ANGLIN, J.: The findings of the jury, especially the