

v. *Attorney General for Alberta and John Deere Plow Co. v. Wharton* 1915 A.C. 330 (noted vol. 51 p. 330).

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—CONTINUING NEGLIGENCE OF DEFENDANT—PROXIMATE CAUSE OF INJURY.

*British Columbia Electric Ry. v. Loach* (1916) A.C. 719. This was an appeal from the Supreme Court of Appeal of British Columbia. The action was brought under the Families Compensation Act (R.S.B.C. 1911, c. 82) (sec R.S.O. c. 151). The circumstances of the case were that Benjamin Sands (of whose estate the plaintiff was administrator), was riding in a cart which crossed the defendant's tramway and whilst so doing the vehicle was struck by one of the defendant's cars and Sands was killed. The evidence was that the deceased and his companion did not observe the approach of the car until they were on the track, and it was too late for them to avoid the car, but that the motorman had seen the wagon when he was 500 yards distant and if the brake had been in efficient order the car could have been brought to a stop within 300 yards, but that the brake was and was known to be defective and consequently the car could not be stopped until after it had struck the wagon. The jury found that the deceased was guilty of contributory negligence in not having taken extraordinary precautions to see that the road was clear, but they also found that, although both parties were negligent, the defendants' motorman might, notwithstanding the deceased's negligence, have avoided the accident if the brake had been in effective condition. The Judge of the trial held that, as both parties were negligent and as there was no evidence of any further negligence on the part of the defendants, they were not liable; the Court of Appeal reversed his decision and gave judgment for the plaintiff and with that conclusion the Judicial Committee of the Privy Council (Lords Haldane, Parker, and Sumner) agree, and in doing so their Lordships refer with approval to the decision of Anglin, J., in *Brenner v. Toronto Ry. Co.* (1907) 13 O.L.R. 423. With reference to that case, it may be well to note on the question of ultimate negligence, their lordships say: "This matter was much discussed in *Brenner v. Toronto Ry. Co.*, 13 O.L.R. 423, when Anglin, J., delivered a very valuable judgment in the Divisional Court. The decision of the Divisional Court was reversed on appeal (1907) 15 O.L.R. 195; (1908) 40 S.C.R. 240, but on other grounds, and in their comments on the decision of the Divisional Court, Duff, J., in the Supreme Court, and also Chancellor Boyd, in *Rice v. Toronto Ry. Co.* (1910) 22 O.L.R. 456, 450; and Hunter, C.J., in *Snow v. Crow's Nest Pass Coal Co.* (1907) 13 B.C.R. 145, 155, seem to have missed the point to which Anglin, J., had specially addressed himself.