

might have in the goods to the defendants by way of estoppel; and as I have said all the Davids are, upon the facts of the case and the evidence in it, precluded from ever asserting any title to the goods against the defendants.

I, therefore, quite agree with the trial Judge in his finding that there was not sufficient evidence to satisfy the onus of proof that the goods in question were not Albert's but were Abraham's; and, in addition to that, there can, I think, be no reasonable finding that, even if the goods had been Abraham's, the title and possession of them had not passed from him to the company before the seizure was made.

I would allow the appeal, and restore the judgment at the trial, which ought not in any case to have been lightly disturbed.

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COURT OF APPEAL.

NOVEMBER 19TH, 1912.

DART v. TORONTO R.W. CO.

4 O. W. N. 315.

*Negligence—Street Railway—Excessive Speed—Collision—Lack of Vigilance by Motorman—Findings of Jury—Vagueness—Contributory Negligence—"Lack of Judgment"—Ultimate Negligence—New Trial—Costs.*

Action for damages for personal injuries sustained by reason of the alleged negligence of defendants' servants in operating a street car upon the streets of Toronto. The jury found negligence on the part of defendants, but found plaintiff could have avoided the accident, "to a certain extent," by the exercise of reasonable care, and further, that the want of reasonable care consisted in his "lack of judgment." Finally they answered that the motorman, after having become aware of the peril of plaintiffs, could, by taking reasonable precautions, have avoided the accident.

LATCHFORD, J., entered judgment for plaintiffs upon the findings of the jury, with costs.

DIVISIONAL COURT, *held*, that the findings of contributory negligence were too vague to be understood, and should not be guessed at, and there was no sufficient evidence on which to base the jury's finding of ultimate negligence.

Judgment at trial set aside and new trial directed.

COURT OF APPEAL dismissed defendant's appeal from judgment of Divisional Court, with costs.

*Rowan v. Toronto R.W. Co.*, 29 S. C. R. 718, referred to.

Appeal by the defendants from the judgment of a Divisional Court reversing the judgment at the trial, before LATCHFORD, J., and a jury, in favour of the plaintiff, and directing a new trial.

The action was brought to recover damages said to have been caused to the plaintiffs upon a highway in the city of Toronto by the negligent operation of a street car by the servants of the defendants.