

that the donee neither assented to the gift nor knew of it; that the property itself was delivered to D., but if only the key had been delivered, it would have been sufficient to effect a donatio mortis causa. Appeal allowed with costs.

*Roscoe, Q.C., for appellant. J. J. Ritchie, Q.C., for respondents.*

N.S.] HALIFAX ELECTRIC TRAMWAY CO. v. INGLIS. [April 2.

*Negligence—Electric car—Excessive speed—Prompt Action—Contributory negligence.*

A cab driver was endeavoring to drive his cab across the track of an electric railway when it was struck by a car and damaged. In an action against the Tramway Co. for damages, it appeared that the accident occurred on part of a down grade several hundred feet long, and that the motorman after seeing the cab tried to stop the car with the brakes, and that proving ineffectual, reversed the power, being then about a car length from the cab. The jury found that the car was running at too high a rate of speed, and that there was also negligence in the failure to reverse the current in time to avert the accident; that the driver was negligent in not looking more sharply for the car; and that notwithstanding such negligence on the part of the driver, the accident could have been averted by the exercise of reasonable care.

*Held*, affirming the judgment of the Supreme Court of Nova Scotia, 32 N.S. Rep. 117, that the last finding neutralized the effect of that of contributory negligence; that as the car was on a down grade and going at an excessive rate of speed, it was incumbent upon the servants of the company to exercise a very high degree of skill and care in order to control it if danger was threatened to anyone on the highway; and that from the evidence given it was impossible to say that everything was done that reasonably should have been done to prevent damage from the excessive speed at which the car was being run. Appeal dismissed with costs.

*Harrington, Q.C., and Covert, for appellant. Borden, Q.C., for respondent.*

Que.] ASBESTOS & ASBESTIC CO. v. DURAND. [April 2.

*Negligence—Use of dangerous materials—Cause of accident—Arts. 1053, 1056 C.C.—Employer's liability.*

To permit an unnecessary quantity of dynamite to accumulate in dangerous proximity to employees of a mining company in a situation where opportunity for damage might occur from the nature of the substance or through carelessness or otherwise, is such negligence on the part of the company as will render it liable in damages for the death of an employee from an explosion of the dynamite, though the direct cause of such explosion may be unknown. Gwynne, J., dissenting.