

Weatherbe, C.J., Townshend, J., Graham, E.J., and
Russell, J.]

[Jan. 24.

LOTT v. SYDNEY AND GLACE BAY RY. CO.

Street railroad—Injury to child—Liability of company—Failure to provide fender.

Plaintiff an infant under the age of two years was run down and injured by an electric or tram car on the defendant company's road causing the loss of a leg. The evidence shewed that the child was seen approaching the track in time to have enabled the motorman to stop the car and avert the accident, but instead of doing so he came to the conclusion that the child was about to go back and increased the speed of the car so that it was impossible for him to stop in time, thus causing the accident.

Held, 1. There was a clear case of negligence for which defendant was responsible in damages.

2. Where an electric or tram car is operated without having attached thereto proper, necessary and efficient fenders as required by law, such absence is evidence of negligence.

TOWNSHEND, J., dissented.

W. B. A. Ritchie, K.C., and T. R. Robertson, in support of appeal. H. Mellish, K.C., contra.

Graham, E.J.]

BRAYLEY v. NELSON.

[Jan. 24.

Building contract—Defective workmanship—Damages.

Plaintiff contracted to build two cottages for defendant for the sum of \$150 each defendant finding the materials. The cottages were to be built like another cottage and it was stipulated that they should not leak. Defendant paid \$200 on account and there was a balance of \$104, including a small amount for an extra not in dispute, due at the time of action brought. The cottages were found to be defectively constructed and to leak badly, particularly around the windows. Plaintiff sued for the balance of the contract price and the extra, and defendant counterclaimed damages for the defective construction.

The evidence shewing that the leak complained of was due to defective work and not to defective materials.

Held, that defendant was entitled to recover on his counterclaim with costs for the defective construction, and that plaintiff