

Held, also, that an erroneous recital in the preamble to the act that the town council has passed a construction by-law had no effect on the question to be decided.

Appeal allowed with costs.

Aylesworth, Q.C., for the appellant.

Delamere, Q.C., for the respondents.

June 24, 1893.

HALIFAX STREET RAILWAY CO. V. JOYCE.

Nova Scotia.]

*Negligence—Street railway—Height of rails—Statutory obligation—
Accident to horse.*

The charter of a street railway company required the road between, and for two feet outside of, the rails to be kept constantly in good repair and level with the rails. A horse crossing the track stepped on a grooved rail and the caulk of his shoe caught in the groove and he was injured. In an action by the owner against the company, it appeared that the rail, at the place where the accident occurred, was above the level of the roadway.

Held, affirming the judgment of the Supreme Court of Nova Scotia, that as the rail was above the road level, contrary to the requirements of the charter, it was a street obstruction unauthorized by statute, and, therefore, a nuisance, and the company was liable for the injury to the horse caused thereby.

Appeal dismissed with costs.

Ross, Q.C., for the appellants.

Newcombe, for the respondent.

June 24, 1893.

O'CONNOR V. NOVA SCOTIA TELEPHONE COMPANY.

Nova Scotia.]

*Municipal corporation—Ownership of roads and streets—Rights of
private property owners—Ownership ad medium filum viæ—*

R.S.N.S. 5th ser. c. 45—50 Vict. c. 23 (N.S.)

The act of the Nova Scotia legislature, 50 V. c. 23, vesting the title to highways and the lands over which the same pass in the crown for a public highway, does not apply to the City of Halifax.

The charter of the Nova Scotia Telephone Company authorized the construction and working of lines of telephone along the sides