occasioned by the unusual manner in which the street cars were being run . . . of which Lesperance testified he was not aware; but, if he was not aware of it, there is nothing to shew that the appellant or its servant knew of it, if that would have made any difference as to the extent of the duty owed to Lesperance.

In my opinion, the respondent's case entirely failed, and his action should have been dismissed.

If I entertained a different view as to the duty which the appellant owed to Lesperance, I should have been of opinion that the findings of the jury ought not to be allowed to stand. . . . The injustice of fixing liability upon the appellant for an act of negligence which was not charged against it, and as to which it had no opportunity of presenting its case to the jury, is manifest.

I would allow the appeal, and substitute for the judgment . . . against the appellant, a judgment dismissing the action against it, the whole with costs.

MARCH 15TH, 1915.

MILO CANDY CO. v. BROWNS LIMITED.

Contract—Purchase of Plant and Business — Right of Purchasers to Benefit of Contract for Supply of Material—Refusal of Contractors to Supply—Evidence — Novation — Equitable Assignment—Statute of Frauds—Breach of Contract—Damages—Measure of — Seizure of Chattels and Book Accounts—Loss of Profits.

Appeal by the defendants from the judgment of LATCHFORD, J., 7 O.W.N. 466.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

W. N. Tilley, for the appellants.

J. W. McCullough and S. J. Arnott, for the plaintiffs, respondents.

MEREDITH, C.J.O.:— . . . The case of the respondents, as presented on their pleadings, is that in the latter part of July, 1914, they purchased from the appellants the business which the