

COURT OF APPEAL.

NOVEMBER 19TH, 1912.

## DART v. TORONTO R.W. CO.

*Street Railway—Negligence — Contributory Negligence — Answers of Jury—Reasonable Care—Indefinite and Inconclusive Answers—“To a Certain Extent”—“By Lack of Judgment”—Ultimate Negligence.*

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.

The jury answered the questions submitted to them as follows:—

“Q. Was the accident to the plaintiffs caused by the negligence of the defendants? A. Yes.

Q. If so, in what did such negligence consist? A. Excessive speed, and not proper warning.

Q. Was the car properly under control as it approached the crossing? A. No.

Q. Was the speed of the car excessive as it approached the crossing? A. Yes.

Q. Was proper warning given the plaintiffs by ringing the gong? A. No.

Q. Could Dart by the exercise of reasonable care have avoided the accident? A. Yes, to a certain extent.

Q. Could any of the other plaintiffs, Tassie, Blair, or Norvell, have avoided the accident by the exercise of reasonable care? A. No.

Q. If Dart could have avoided the accident, in what did his want of reasonable care consist? A. By lack of judgment.

Q. What was the want of reasonable care, if any, on the part of the other plaintiffs or any of them? (No. answer.)

Q. After the motorman ought to have become aware of the peril of the plaintiffs, could he, by taking reasonable precautions have avoided the accident? A. Yes.

Q. What damages, if any, do you find the plaintiffs entitled to? A. Dart, \$800; Tassie, \$250; Blair, \$25; Norvell, \$15.”