

The
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No. 34.

COURT OF APPEAL.

APRIL 29TH, 1912.

SLINGSBY v. TORONTO R.W. CO.

*Street Railways—Injury to and Death of Person Crossing Track
—Negligence—Contributory Negligence—Evidence—Findings of Jury.*

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., upon the findings of a jury, in favour of the plaintiff.

The action was brought by Lizzie Slingsby, widow of Harry Slingsby, on behalf of herself and children, to recover damages for the death of her husband, who, when attempting to cross the defendants' tracks, riding a bicycle, was struck by a car and killed, owing, as the plaintiff alleged, to the negligence of the defendants or their servants.

The judgment was for \$5,000 damages and costs.

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

D. L. McCarthy, K.C., for the defendants.

W. D. McPherson, K.C., for the plaintiff.

MOSS, C.J.O. :—The jury found that the car which struck the deceased was running at an excessive rate of speed; and it is conceded that there is evidence upon which they could reasonably arrive at that conclusion.

The question is thus narrowed down to whether the deceased so conducted himself as to cause the accident, which, it is argued, he might have avoided had he exercised reasonable care. The jury have absolved him from the charge of negligence.

There is undoubtedly much room for argument against this conclusion, but it cannot be said that it is wholly without support from the evidence.

It appears that at or near the south-west corner of College