

**CASE NO.**

Cite as: Gardiner v. Scherer, 1999 NSCA 175

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MARK GARDINER and  
JANICE MARIE KERR

- and -

DAVID SCHERER

Appellants

Respondent

C.A. No. 146109

Halifax

ROSCOE, J.A.

**APPEAL HEARD:**

November 30, 1998

**JUDGMENT DELIVERED:**

January 12, 1999

**SUBJECT:**

**Negligence, Motor Vehicle Act, s. 248: Burden of Proof**

**SUMMARY:**

The appellants suffered injuries arising out of a collision with a motor vehicle driven by the respondent. The appellants said they were walking with their bicycles on the sidewalk at the time of the accident. The respondent said they were driving the bicycles on the wrong side of the street facing the oncoming traffic. Another witness testified that she saw the defendants riding their bicycles just before the accident. The trial judge found that the appellants were solely responsible for the accident and dismissed their claims for damages.

**ISSUE:**

Did the trial judge err in law in placing the burden on the appellants to establish the respondent's negligence and in failing to apply the provisions of s. 248 of the **Motor Vehicle Act**?

**RESULT:**

Appeal allowed, new trial ordered. The trial judge erred by placing the burden on the appellants to prove that the respondent's negligence was the cause of the accident, without consideration of s. 248 of the **Motor Vehicle Act**.

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