

COURT OF APPEAL.

NOVEMBER 19TH, 1912.

McDOUGALL v. GRAND TRUNK R.W. CO.

Railway—Alighting from Train while in Motion—Negligence—Contributory Negligence—Conflict of Evidence—Absence of Pullman Ticket—Trespasser—Reasonable Action—Emergency.

Appeal by the defendants from the judgment in an action tried by Meredith, C.J., and a jury. The plaintiff was a passenger from Toronto to Weston, where, on descending from the train, he fell and was run over by the rear car and lost an arm. The jury awarded him \$2,500.

The appeal was heard by GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

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

F. E. Hodgins, K.C., and A. C. Heighington, for the plaintiff.

MACLAREN, J.A.:—The chief dispute was whether the vestibule doors at the rear of the day car, in which the plaintiff and a friend were riding, were open or closed while the train was standing at the Weston station. It was assumed throughout, that if these doors were closed it would be negligence on the part of the company. The conductor and the brakesman of the train swore that they had remained open as usual from Toronto, and were only closed after the train started from Weston. Plaintiff and his companion, Gidney, swore that they were in the rear seat of the rear day car, that when "Weston" was called out, and the train was slowing down they arose and went into the rear vestibule, and finding all the doors closed, Gidney tried first to open the doors at the rear of the day car, and finding them "stuck" he next tried those at the front of the first Pullman with a like result. He then rushed into the Pullman car followed by the plaintiff, and passing the porter hurried into the rear vestibule, reaching it just as the train was starting. Gidney opened these vestibule doors and descended safely to the ground east of the station platform. Plaintiff following him closely tried to do the same, but stumbled and fell under the rear car near the eastern end of the platform with the result stated.