

An appeal by the defendant company from the judgment of KELLY, J., 47 O.L.R. 526, 18 O.W.N. 226.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, J.J.A.

G. Lynch-Staunton, K.C., and C. Gibson, for the appellant company.

M. J. O'Reilly, K.C., for the plaintiff, respondent.

FERGUSON, J.A., in a written judgment, after setting out the facts, said that the verdict and judgment appeared to have been based upon the theory that there is more danger of a passenger alighting from a street car being injured by passing motor vehicles when the car is stopped at a place other than the regular stopping place; and, though there is no law to prevent the street car being stopped at such a place, that the street railway company owes the alighting passenger a greater duty to protect him or her against injury from passing vehicles than it owes where the stop is made at a regular stopping place.

This was not the case of a street car being stopped at a place selected by the motorman or conductor, coupled with an express or implied invitation to alight. The selection was made by the plaintiff—she was responsible for the making of the stop between two street intersections.

Neither the Motor Vehicles Act nor the municipal by-law made it unlawful to stop at any place other than the regular stopping place, and there is nothing in the Act that makes the obligation or duty of the driver of an automobile less when the street car is stopped at a point other than the regular stopping place.

Reference to *Hay v. Canadian Pacific R.W. Co.* (1919), 58 Can. S.C.R. 283; *Wallace v. Employers' Liability Assurance Corporation* (1912), 26 O.L.R. 10; *Oddy v. West End Street R.W. Co.* (1901), 178 Mass. 341.

There was no evidence to support the jury's finding of negligence.

The appeal should be allowed with costs and the action be dismissed with costs.

MEREDITH, C.J.O., in a short written judgment, said that he agreed entirely with Ferguson, J.A. It was the respondent who selected the place where the car was to be stopped; and, if she thought the place where it was stopped was the regular stopping place at the next street intersection, the motorman was not informed of and did not know what was in her mind. The learned Chief Justice said that he would be sorry to decide anything which