

Ont.]

[May 6.]

## FLEMING v. TORONTO RY. CO.

*Negligence—Street railway—Explosion—Defective controller—Inspection.*

S. was riding on the end of the seat of an open street car in Toronto when an explosion occurred. The car was still in motion when other passengers in the same seat, apparently in a panic, cried to S. to get off, and when he did not do so, endeavoured to get past him, whereby he was pushed off and injured. In an action for damages the jury found the company negligent in using a rebuilt controller in a defective condition and not properly inspected, and the motorman negligent in not applying the brakes.

*Held*, affirming the judgment of the Court of Appeal (27 O.L.R. 332) that the evidence justified the jury in finding that the controller had not been properly inspected and that a proper inspection might have avoided the accident.

Per Idington and Brodeur, JJ., Anglin and Davies, JJ., contra, that the motorman should have applied the brakes.

Appeal dismissed with costs.

*D. L. McCarthy*, K.C., for defendants appellants. *Gambic*, K.C., for respondent.

Ont.]

[May 6.]

## MERRITT v. CITY OF TORONTO.

*Riparian rights—Interference—Evidence.*

M., claiming to be a riparian owner on the shore of Ashbridge Bay (part of Toronto harbour), claimed damages from, and an injunction against, the city for interference with his access to the water when digging a channel along the north side of the bay.

*Held*, affirming the judgment of the Court of Appeal (27 O.L.R. 1), by which an appeal from a Divisional Court (23 Ont. L.T. 365) was dismissed, that the evidence established that between M.'s land and the bay was marsh land and not land covered with water as contended, and therefore M. was not a riparian owner.

Appeal dismissed with costs.

*Mowat*, K.C., for plaintiff appellant. *Geary*, K.C., and *Colquhoun*, for respondent.