

# The Ontario Weekly Notes

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## HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

FEBRUARY 16TH, 1911.

BROWN v. CANADIAN PACIFIC R.W. CO.

*Railway—Person Stealing Ride on Train—Order from Conductor to Get off while Train Moving—Injury—Evidence—Negligence—Findings of Jury—Former Trial—New Trial Directed by Court of Appeal—Identity of Evidence—Res Judicata.*

Appeal by the defendants from the judgment of TEETZEL, J., upon the findings of a jury, in favour of the plaintiff for the recovery of \$1,000 damages for injuries sustained by the plaintiff in getting off a moving train, by the order of the conductor. The plaintiff was "stealing a ride" upon the train, and, when the conductor discovered him, he either motioned with his hand or told the plaintiff to get off. There was conflicting evidence as to the rate at which the train was going; the plaintiff fell and got between a car and the platform, and was injured.

The judgment appealed from was given at the second trial of the action; at the first trial there was a verdict and judgment for the plaintiff for \$2,000. This was set aside by the Court of Appeal, 13 O.W.R. 879, and a new trial ordered; the order was affirmed by the Supreme Court of Canada.

At the second trial the jury found, in answer to questions: (1) that the plaintiff got off the train under compulsion of the conductor's order; (2) that the plaintiff had reasonable grounds for believing that, if he did not obey the order, he would be put off by physical force; (3) that the conductor ordered the plaintiff off the train; (3a) that he did so by wave of the hand and by word of mouth; (4) that the speed of the train was such as to make it dangerous to get off; (5) that the conductor ought to have known that it was dangerous; (6) that, having regard to the circumstances and the place at which the order was given, and the speed at which the train was moving, the conduct of