

# The Ontario Weekly Notes

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HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

DECEMBER 15TH, 1909.

LETCHER v. TORONTO R. W. CO.

*Street Railway—Injury to Passenger—Negligence—Contributory  
Negligence—Findings of Jury.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., ante 59, in favour of the plaintiffs, upon the findings of a jury.

The appeal was heard by MULOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ.

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

Alexander MacGregor, for the plaintiffs.

The judgment of the Court was delivered by MULOCK, C.J.:—  
The controversy . . . arises out of the answers of the jury to the 3rd and 5th questions:—

“3. Or were the injuries sustained by reason of her own negligence or want of care? A. No.

“5. Could the plaintiff Julia Letcher, notwithstanding any negligence of the defendants, by the exercise of ordinary care have avoided the accident? A. Yes, possibly by taking hold of the hand-rail.”

If the record had stood as left with the answer to question 3, there would have been an unqualified finding that the plaintiff was not guilty of any want of care. But the defendants say that that answer should be interpreted as applying to a certain part of the plaintiff's conduct only, and not to her conduct generally in connection with the accident.

The trial Judge reviewed the case fully, and, although he made some brief observations in connection with question 3, he did not