

The American cases cited vary somewhat, but I think the result of their holding is, that where the passenger goes on the platform and rides there as of necessity and not of choice, he is not without right of action for injuries sustained from overcrowding or as the result of overcrowding. In such a conjunction of circumstances, the question of negligence or no negligence is for the jury. The cases are all collected in Am. and Eng. Encyc. of Law, 2nd ed., vol. 5, pp. 678-681. I may refer specially to cases like this of *Chicago v. Fisher*, 141 Ill. 614, and *Marvin v. Manhattan*, 113 N. Y. 659.

We need not expect to find cases of this kind in England, where the method of car construction for railways is different. But the authorities affirm the doctrine here applicable.

[Reference to *Metropolitan R. W. Co. v. Jackson*, 3 App. Cas. 193; *Cobb v. Great Western R. W. Co.*, [1893] 1 Q. B. 465; *Hogan v. South Eastern R. W. Co.*, 28 L. J. N. S. 271.]

There was ample evidence to go to the jury—no objection is made to the charge—and the result in plaintiff's favour ought not to be disturbed.

We disposed during argument of the objection that defendants were not the parties liable for the safe conduct of the excursionists. The contract was made with their chief officer, and to all fair intents with them, and, in the absence of any contradictory evidence, the jury might well find as they did.

Appeal dismissed with costs.

MEREDITH, J., and MAGEE, J., each gave reasons in writing for the same conclusion.

DECEMBER 20TH, 1904.

C.A.

POTVIN v. CANADIAN PACIFIC R. W. CO.

Railway—Injury to Child Playing on Track—Death—Negligence—Excessive Speed in City—Unfenced Track—Findings of Jury—Contributory Negligence of Child—Inference from Facts—Rule 817.

Appeal by defendants from judgment of FALCONBRIDGE, C.J., upon the answers of a jury to questions, in favour of plaintiff for the recovery of \$300 damages.

W. H. Curle, Ottawa, for appellants.

O. E. Culbert, Ottawa, for plaintiff.