

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

MAY 18TH, 1915.

\*DALE v. TORONTO R.W. CO.

*Trial—Jury—Address of Counsel for Plaintiff—Inflammatory Language—Verdict for Plaintiff—Motion by Defendants for New Trial—Objection not Taken at Trial—Waiver—Duty of Trial Judge.*

Appeal by the defendants from the judgment of DENTON, Jun. Co. C.J., in favour of the plaintiff, upon the findings of a jury, in an action brought in the County Court of the County of York, to recover damages for injuries sustained by the plaintiff by being thrown from the step of one of the defendants' street cars, by its being negligently started with a jerk, as she alleged, when she was about to alight. The jury accepted the plaintiff's account of the occurrence, as against that of the defendants, which was that she got off voluntarily while the car was in motion; the jury also found that there was no contributory negligence on her part; and they assessed her damages at \$925.

The defendants asked for a new trial, upon affidavits stating that the language used by the plaintiff's counsel in addressing the jury at the trial was improper and inflammatory; these affidavits were answered by affidavits filed by the plaintiff.

The appeal was heard by RIDDELL, LATCHFORD, MIDDLETON, and KELLY, JJ.

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

N. F. Davidson, K.C., for the plaintiff.

RIDDELL, J., read a judgment, in the result of which the other members of the Court concurred, in which he said that the

\*This case and all others so marked to be reported in the Ontario Law Reports.