

MAY 25TH, 1904.

DIVISIONAL COURT.

GALLINGER v. TORONTO R. W. CO.

Street Railways—Injury to Person Crossing Track—Negligence—Contributory Negligence—Nonsuit.

Motion by plaintiff to set aside nonsuit entered by FERGUSON, J., in an action for damages for personal injuries received by plaintiff by being struck by a car of defendants.

Plaintiff, in returning home at two o'clock in the morning, alighted from a west-bound car on the north track of a street in the city of Toronto, and proceeded to cross the north and south tracks in front of an approaching east-bound car on the south track, then about one hundred feet away. He was struck by the car and injured. There was evidence that it was going at the rate of eight to ten miles an hour; that there was a bright electric light near by; that plaintiff, if careful, could have seen the approaching car; but that the motor man did not apply the brakes or sound the gong before plaintiff was struck.

B. N. Davis, for plaintiff.

James W. Bain, for defendants.

THE COURT (MEREDITH, C.J., STREET, J., ANGLIN, J.), held that the nonsuit was properly directed, and dismissed the motion with costs.

FALCONBRIDGE, C.J.

DECEMBER 22ND, 1904.

CHAMBERS.

RE THOM v. McQUITTY.

Division Court—Jurisdiction—Amount over \$100—Ascertainment—Necessity for Extrinsic Evidence—4 Edw. VII. ch. 12. sec. 1 (O.)—Application to Pending Action—Prohibition.

Motion by defendant for prohibition to the 2nd Division Court in the county of Lambton, upon the ground that the Court had no jurisdiction, because the amount in question was over \$100 and was not ascertained by the signature of defendant.

J. Hales, for defendant.

C. A. Moss, for plaintiff.