

Not only so, but he compelled those who attempted to use it to pay for its use, even in the winter, shewing that he was not providing a highway for the public. Casselman's sons, who were the devisees under his will, after his death partitioned the estate among them. The language of the partition deed shewed that this land was excepted out of a tract of 400 or 500 acres for the joint benefit of those owning the several portions, as a roadway. This defendant had no rights there. The roadway was not appurtenant to the land now owned by him. It was not a way of necessity, because it was shewn that from the land which the defendant owns there is a way out to the government highway leading to his market town, the village of Casselman. Judgment for plaintiff for \$5 damages and an injunction restraining defendants from further trespassing on this property, with costs.

SEPTEMBER 25TH, 1903.

C.A.

DAWDY v. HAMILTON, GRIMSBY, AND BEAMS-
VILLE R. W. CO.

Street Railways—Injury to Person—Conductor Attempting to Pull Person on Moving Car—New Trial—Discretion—Interference.

Appeal by defendants from order of a Divisional Court, 5 O. L. R. 92, 1 O. W. R. 781, directing a new trial.

Action to recover damages for an injury received by plaintiff owing to alleged negligence of defendants.

The jury found that the plaintiff's injury was caused by the conductor seizing her hand and trying to pull her on the car, and that he acted negligently, and assessed plaintiff's damages at \$650.

The trial Judge dismissed the action on the ground that in endeavouring to pull on a car a person who was merely standing on the platform and not attempting to get on, the conductor was not acting within the scope of his duty as the servant of defendants: *Coll v. Toronto R. W. Co.*, 25 A. R. 55.

In the Divisional Court *BOYD, C.*, was of opinion that the case had not been fully tried by the jury; that a question as to the scope of the conductor's authority should have been submitted to them. The other member of the Divisional Court, *MEREDITH, J.*, agreed that there should be a new trial, being of opinion that there was some evidence of negligence.

E. E. A. DuVernet, for defendants, appellants.

W. M. German, K.C., for plaintiff.