

MIDDLETON, J.

OCTOBER 19TH, 1914.

CURRY v. SANDWICH WINDSOR AND AMHERSTBURG  
R.W. CO.

*Negligence—Collision between Street Car and Automobile—Derailment of Car—Res Ipsa Loquitur—Attempt to Prove Cause of Derailment—Evidence—Findings of Jury.*

Action to recover damages for injury resulting to the plaintiff from a collision of his automobile with an electric street car of the defendant company.

The action was tried with a jury at Sandwich.

J. H. Rodd, for the plaintiff.

M. K. Cowan, K.C., and G. A. Urquhart, for the defendant company.

MIDDLETON, J. :—This action arose out of a collision between an automobile and a street car. The occurrence took place upon Sandwich street, shortly after midnight upon the 28th October, 1913, when the street was comparatively free from traffic. The automobile was going east. It passed the elevation of the Canadian Pacific Railway bridge upon the street railway track. The street car was then going in the opposite direction, and was distant a little over 800 feet. The automobile turned off the street car track and travelled on the south side of the road until it again turned into the track to avoid another automobile standing near the kerb. So far, the accounts substantially agree. The automobile was struck by the front of the street car behind its front wheel, and was very seriously damaged.

The plaintiff's theory is, that the automobile had turned out of the car track again, and that the street car left the rails, running into the automobile. The defendant company's theory is, that, when the automobile attempted to get off the street car track, it skidded, and hit the front of the car, and that the car was derailed as the result of this blow.

So far as developed at the trial, there did not appear to be any physical impossibility in either of these theories being correct. The automobile was a heavy car, weighing, with passengers,  $2\frac{1}{2}$  tons, and was said to be travelling at a very high speed. The street car was a light car, weighing about 6 tons, mounted upon a single truck, the overhang at the front being 10 feet.