

FIRST DIVISIONAL COURT.

OCTOBER 15TH, 1917.

## \*GAZEY v. TORONTO R.W. CO.

*Street Railway—Injury to Passenger Alighting from Car—Invitation to Alight while Car Moving—Opening of Exit-door—Evidence—Negligence—Findings of Jury.*

Appeal by the defendants from the judgment of LATCHFORD, J., at the trial, upon the findings of a jury, in favour of the plaintiff Rebecca Gazey for the recovery of \$2,000 damages and in favour of her husband, the plaintiff James Gazey, for the recovery of \$1,500 damages, with costs, in an action for damages arising from injury sustained by the plaintiff Rebecca Gazey when alighting from one of the defendants' street-cars, by reason, as alleged, of the negligence of the defendants' servants in charge of the car.

On the evening of the 4th February, 1916, the plaintiff Rebecca was a passenger on a car; being desirous of alighting at the corner of Roncesvalles avenue and High Park boulevard, she requested the conductor to let her off there; as that corner was approached, the conductor signalled the motorman to stop. When the car arrived at the corner, and had, as the plaintiff thought, stopped, the motorman opened the door leading from the vestibule to the steps of the car; the plaintiff attempted to alight, but was, by the movement of the car, thrown to the ground and seriously injured.

The questions left to the jury and their answers were as follows:—

- (1) Was the accident to the plaintiff Rebecca Gazey caused by any negligence on the part of the defendants? A. Yes.
- (2) If so, in what did such negligence consist? A. Owing to motorman opening front door of car before being stopped.
- (3) Could the plaintiff Rebecca Gazey, by the exercise of reasonable care, have avoided the accident? A. No.

The appeal was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, JJ. A., LENNOX, J., and FERGUSON, J.A.

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

I. F. Hellmuth, K.C., and E. C. Cattanach, for the plaintiffs, respondents.