

Appeal by defendants from judgment of MEREDITH, C.J.C.P., awarding plaintiff \$2,500 damages upon the findings of a jury in an action for damages for personal injuries sustained through the alleged negligence of defendants.

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

F. E. Hodgins, K.C., and A. C. Heighington, for the plaintiff.

HON. MR. JUSTICE GARROW:—Appeal by the defendants from the judgment at the trial before Meredith, C.J., and a jury in favour of the plaintiff. The action was brought to recover damages caused to the plaintiff while a passenger on the defendants' railway, by reason of insufficient provision to enable him to properly and safely alight from the train upon which he was travelling, upon its arrival at Weston station.

The plaintiff and his friend, John Gibney, had left Toronto together, bound for Weston, a station a few miles to the west of that city, where the train arrived a little before midnight. They were seated in a passenger coach of the ordinary description, so far as appears, connected at its rear end with a Pullman coach, the whole being what is called a vestibuled train. There was a door of exit at each end of the passenger coach. The forward door was open, but there was conflicting evidence whether the rear door also was open.

The plaintiff and his friend tried the rear door near which they had been sitting, and finding it as they say locked, they passed through the Pullman coach, and alighted from the rear platform of that coach after the train had commenced to move; Mr. Gibney, who was first, alighted without difficulty, but the plaintiff in alighting immediately afterwards fell and was severely injured. In passing through the Pullman coach they met the porter who was apparently in charge. He asked if they desired to get Pullman accommodation, and getting a negative reply did not order them out or attempt to turn them back or otherwise prevent them from proceeding to the rear platform as they did.

It is not claimed that the stop at the station was not of sufficient length to have enabled the plaintiff and his friend to alight under ordinary circumstances.

At the close of the evidence for the plaintiff, counsel for the defendants moved for a nonsuit, which was reserved, and renewed at the close of the whole case, when this took place:—