

BRITTON, J., gave reasons in writing for the same conclusion.

FALCONBRIDGE, C.J., concurred.

DECEMBER 20TH, 1904.

DIVISIONAL COURT.

BURRISS v. PERE MARQUETE R. W. CO.

*Railway—Injury to Passenger—Negligence—Overcrowding Train—Proximate Cause—Necessity for Being on Outside Platform.*

Appeal by defendants from judgment of ANGLIN, J., in favour of plaintiff, upon the findings of a jury, in an action for damages for injuries sustained by plaintiff owing to the alleged negligence of defendants.

The appeal was heard by BOYD, C., MEREDITH, J., MAGEE, J.

H. E. Rose, for defendants.

P. H. Bartlett, London, for plaintiff.

BOYD, C.—The accident happened on an excursion train engaged by the Irish Protestant Benevolent Society to convey a picnic party from London to Port Stanley by the Pere Marquette system in August, 1903. The train was made up, to the limit fixed for excursions, of 11 passenger coaches, and the evidence appears uncontradicted that these were crowded from London to St. Thomas, and overcrowded from St. Thomas to Port Stanley. Plaintiff's evidence is that he was invited to get on these cars at London, and was unable to find a seat, and was crowded out to the platform. At St. Thomas he was crowded so much that he sat down for better protection on the second step of the outside platform, and while so sitting was thrust out by a swerve of the train, which made the persons standing on the platform press up against him suddenly. This caused him to lose his balance—one of his legs protruded and was struck by some fixture on the track, probably a fence, and he himself would have fallen off, if he had not been grasped by a companion. His companion gives much the same account, and it is corroborated by a third witness, Crawford, as to the dense crowd on the train and the passengers having to stand in the passages and on the platforms.