

Action by passenger to recover damages for injuries sustained in alighting from the defendants' street car. Tried at Hamilton, October 30th, 1913.

W. S. McBrayne, for plaintiff.

D. L. McCarthy, K.C., for defendant.

HON. MR. JUSTICE MIDDLETON:—The cars operated on the defendants' railway are open cars, to which access may be had from a running-board on either side. Part of the line in question was operated as a double track line. These 2 tracks merged into a single track, extending some considerable distance. The cars run to the end of the line and are not then reversed, but when the direction is to be changed they are operated from the other end of the car.

For the purpose of preventing passengers alighting from the side adjacent to the opposite track, the cars are provided on each side with bars which can be placed along the sides of the car, thus preventing the passengers from alighting at that side. When not in use, these bars are lifted to the top of the car, where they are hooked up.

At the time of the happening of the accident a portion of the double track was flooded. This necessitated the passengers alighting, crossing over the obstruction resulting from the flood, and then continuing their passage in another car beyond the obstruction. When the car in question reached this transfer point there was much confusion, owing to the alighting of all the passengers in the car and the embarking of passengers coming in the opposite direction. When the car reached this point the bar was raised, probably by some of the passengers; and the plaintiff, attempting to alight, was injured.

As an additional means for the protection of passengers and to secure the use of the proper side of the car while operating upon double tracks, the running-board or step along the side of the car is hinged, and when not in use is turned up against the side of the car and hooked in that position. When the car in question started upon its journey this running-board was turned up and hooked; but it had been unhooked and turned down long before the point of transfer was reached.

Mrs. Jones, the plaintiff, was seated nearest to this side of the car. She waited until most of the passengers had alighted, and other passengers were embarking, when she