NOVEMBER 24TH, 1902.

C. A.

KEITH v. OTTAWA AND NEW YORK R. W. CO.

Railway—Injury to Passenger—Alighting from Moving Car—Negligence—Contributory Negligence—Findings of Jury—Damages.

Appeal by defendants from judgment of MACMAHON, J., ante 104, in favour of plaintiff upon the findings of the jury in an action for damages for injuries sustained by plaintiff in endeavouring to get off a train of defendants as it was moving out of the station.

The questions and answers of the jury were as follows: (1) How long did the train stop at Finch station? A.—Cannot say. (2) Was the time the train remained there sufficient to enable plaintiff to alight? A.—No. (3) Was Keith aware when he reached the platform of the car that the train was in motion? A.—Yes. (4) If Keith was guilty of any negligence which contributed to the accident, what was such negligence? A.—None. (5) If Keith is entitled to recover, at what do you assess the damages? A.—$1,000.

The appeal was heard by OSLER, MACLENNAN, MOSS, GARROW, JJ.A.

W. R. Riddell, K.C., and W. H. Curle, Ottawa, for appellants, contended that the trial Judge should have nonsuited, on the ground that the act of alighting from a moving train was in itself negligence on the part of the plaintiff which relieved defendants from liability for damages, in the absence of circumstances tending to excuse or justify the act, and that if defendants were guilty of negligence in not stopping the train for a sufficient time to allow plaintiff to alight, the damages claimed were too remote. They also contended that upon the evidence the jury should have found that the train was stopped for a sufficient time to enable plaintiff to alight, and have found plaintiff guilty of contributory negligence. They submitted further that the learned Judge should not have entered judgment for plaintiff in face of the jury's answers that they could not say how long the train was stopped, and that the damages were excessive.

W. H. Blake, K.C., for plaintiff, contra.

MOSS, J.A.—I think the learned Judge properly declined to withdraw the case from the jury. I do not understand the defendants' proposition to go the length that under no circumstances and in no case is a person justified in alighting from a moving train, but that presumptively it is an act of