

happen before the accident which suggested that the street-car was unfit to run? A. Yes, from the unusual jolting before the accident. 5. If you answer "yes" to the last question, state what it was that so happened? A. Answered in the fourth question. 6. Damages? A. \$1,000.

The plaintiff was sitting in the car at the end of a seat, where a small brass rod was placed a few inches above the seat-level; against this she was thrown, the lowest part of her spine coming in contact with it. That the stop was a sudden one was not denied, but it was said that no warning of it could be had by jarring, because it was found to be due to the fall of the brake-shoe, which, coming down on the track in front of the wheel, resulted in an immediate cessation of the car's motion, throwing every one about.

McCrea, the defendants' master mechanic, was a witness at the trial, and explained the result of the fall of the brake-beam, from one end of which a plug, which held it up, had worked out. It appeared from McCrea's evidence, which was the only evidence on the subject, that there was a possibility that, if the brake-beam was let down at one end only, the other holding firm, there would be a period of time when there would be bumping or jarring. There was therefore some evidence upon which the jury might find their answer to question 4. If the possibility spoken of by McRae existed, the duty of the servants of the defendants was clear, i.e., to ascertain why the bumping was going on: *St. Denis v. Eastern Ontario Live Stock and Poultry Association* (1916), 36 O.L.R. 640. There was but slight evidence to support the possibility—that given by the master mechanic, and his expert knowledge was not shewn to be possessed by either the motorman or conductor. Want of sufficient information in the subordinate officers was not a reason for absolving the defendants, who were in law charged with responsibility for conditions which might exist or be brought about. Assuming, as the jury did, that there was continuous bumping or jarring, inquiry should have been made at the time by those in charge. The fact that bumping may be occasioned in the streets of Toronto by causes not in themselves involving danger does not excuse the absence of inquiry by the motorman and conductor, and the failure to inquire stands in the way of the defendants relying on the want of information by these men. The jury were entitled to come to the conclusion they did.

Arthritis as an element in the damages depended on the evidence of two doctors. If these two differed, there was evidence for the jury to weigh and decide upon.

Upon the whole case, the appeal failed.

Appeal dismissed with costs.