

HIS HONOUR JUDGE DENTON, at the trial, gave plaintiffs judgment for \$200 and costs.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J.EX., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

J. W. Bayne, K.C., for the defendant railway company, appellants.

J. A. McEvoy, for the plaintiff, respondent.

HON. SIR WM. MULOCK, C.J.EX. (v. v.):—There may not be evidence as to the purpose, but the public have come to have an opinion that the door is there to be opened to allow passengers to alight.

It is under the control of one of the servants of the company. The passenger himself cannot open it, he has to wait until it is opened for him.

Then here the car had been slowed down and was at a standstill apparently, and the passenger was not able to discover any movement when she reached the place to get out, where the door had been opened to allow her to alight; and not being able to feel any motion of the car, and on being directed to the open door, she assumed that now was the time for her to step down, and get off.

We think that that was an invitation for her to alight.

HON. MR. JUSTICE SUTHERLAND (*dissenting*):—I would be strongly inclined to give effect to the appellant's contention.

It seems to me that under the circumstances, on the plaintiff's own evidence, the mere opening of the door of the car when it was slowing down, when the motion was still apparent, should have warned her not to step down until the car had stopped. It need not have been deemed an invitation in itself for her to alight.

Appeal dismissed with costs, Hon. Mr. Justice Sutherland, dissenting.