and that judgment standing it operates as an estoppel as between the parties thereto (and their privies if any) but no further. The plaintiff could not as against the company say that the negligence was the negligence of Verral but there is no reason why she should not as against Verral.

These are commonplaces: and I reserved my decision solely to read the authorities so earnestly pressed by Mr. Phelan to see if there were anything in them laying down or indicating the law at all differently. There is not.

So far as this is an application to the discretion of the Court, there is nothing in the defendant's conduct entitling him to consideration beyond any other litigant; while on the strict law he must fail.

The motion will be dismissed with costs to the plaintiff in any event.

I have not overlooked the fact that the first action seems to have been intended to be brought against Verral and the intention changed, as Verral's name appears first on the writ and is cancelled.

COURT OF APPEAL.

McDOUGALL v. GRAND TRUNK Rw. CO.

4 O. W. N. 363.

Negligence—Railway—Passenger Alighting—Door of Coach Closed—Negligence—Right to Enter Pullman—Trespasser—Contributory Negligence — Train in Motion — Emergency — Reasonable Act —Injuries—Damages.

Action by plaintiff for damages for personal injuries sustained by reason of the alleged negligence of defendants. Plaintiff was a passenger upon a car of defendant's train travelling from Toronto to Weston. As the train approached Weston, near midnight, he made preparations to alight, and when the train stopped, with a companion, went to the rear door of their car and, finding it locked, passed through the car immediately behind, which happened to be a Pullman sleeper, to its rear door, which was open. By this time the train was under way and going some four or five miles an hour. Plaintiff's companion alighted safely, but he fell and was seriously injured, losing an arm. Defendants claimed that plaintiff had no right to be in the Pullman, and he was, therefore, a trespasser, towards whom they owed no duty, and that in addition, he was guilty of contributory negligence in alighting while the train was in motion.

MEREDITH, C.J.C.R., at the trial, by consent of counsel, only submitted two questions to the jury: (1) as to whether the rear door of plaintiff's car was locked, which defendants denied, which the jury answered in the affirmative, and (2) as to the amount of damages, which they fixed at $2,500. Judgment was then entered for plaintiff for $2,500 and costs.

COURT OF APPEAL (MEREDITH, J.A., dissenting), dismissed defendants' appeal with costs.

Keith v. Ottawa & New York Rw. Co., 5 O. L. R. 116, approved.