

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

W. A. Logie, for appellant.

F. McCarthy, K.C., for respondent.

HON. SIR WM. MEREDITH, C.J.O.:—The appellant sues for damages for breach of an alleged agreement between her and the respondent to carry her on its railway.

The appellant was the holder of a ticket of the respondent entitling her to be carried on its railway from any point in the City of Hamilton to any other point within the limits of that city. She took passage at the terminal station in Hamilton on a car which was routed to run through without stop to Dundas. Her purpose was to leave the car at a stopping place known as Flatt Avenue, within the limits of the City of Hamilton. On presenting her ticket, it was refused by the conductor of the car, who told her she must get off at Hess Street, where the car was required to stop before crossing an intersecting railway line, and when the car stopped there, the appellant left the car.

The car was a through car, routed to run to Dundas without stopping, and upon it was a sign board with the words "Hatt Street station only; no intermediate stops;" Hatt Street station being the terminal station at Dundas. In addition to this, the conductor, before the car left the terminal station at Hamilton, went through the car and called out that it was going through to Dundas and that there would be no intermediate stops. The appellant testified that if this was done, she did not hear it, and that she did not see the sign board or know that the car would not make intermediate stops between Hamilton and Dundas.

The question for decision is whether, as the appellant contends, she was entitled on presentation of her ticket to be carried on the car on which she had taken passage to the stopping place at Flatt Avenue, and to have had the car stop there to enable her to disembark; or, as the respondent contends, it was entitled to run a car which did not stop between Hamilton and Dundas and to refuse to carry upon it a passenger intending to stop at an intermediate stopping place or to stop there to let off a person who had mistakenly or otherwise taken passage on the car.