

Divisional Court.]

[May 20.]

SIMPSON v. TORONTO &amp; YORK RADIAL CO.

*Negligence—Tram car—Passenger projecting head—Accident.*

Action for damages. On September 4th, 1905, the plaintiff boarded a car of the defendants at Long Branch for Toronto, and as the car was crowded and he wished to smoke he stood on the rear platform of the car. He leaned back over the wire gate of the car, which was quite low, in order to expectorate, and in so doing was struck by a post belonging to the defendants and used by them for their trolley-wire.

*Held*, upon the whole case that there was ample evidence upon which the jury could as they did find the cause of the accident to be the negligence of the defendants, and a nonsuit was properly refused. The extent to which the head of the plaintiff was projected was not such as to make his act negligence per se and it was rightly left to the jury to say whether his act under the circumstances was negligence at all.

The Massachusetts rule that if one riding on a car with his elbow or arm projecting out of the window sustains an injury he is guilty of want of due care which will prevent him from maintaining his action, dissented from.

*Robinette, K.C.*, and *C. A. Moss*, for defendants, appellants.  
*Loftus*, for respondent.

## ASSESSMENT CASES.

### IN RE VOKES ASSESSMENT.

*Assessment—Removal from one municipality to another after assessment fixed—Change of investment.*

V. residing in Toronto was assessed in 1902 for \$10,000 on personal property and \$1,990 on realty, for the year 1903. In 1903 he paid taxes on the \$1,990, but objected to pay on the whole of the \$10,000, as he was not residing in Toronto in 1903 and had invested part of that sum in real property in another municipality.

*Held*, that, nevertheless, he was liable to pay taxes on the whole assessment.

[TORONTO, Nov. 2, 1906.—Winchester, Co.J.]

This was an appeal from the Board of Assessment of the City of Toronto, to the County Judge of the County of York.

In 1902 Mr. Vokes, the appellant, while residing on Will-