

motorman was guilty of negligence in not applying the brake, which would have prevented the accident; and there was no contributory negligence.

The appeal to Court of Appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH and HON. MR. JUSTICE MAGEE.

D. L. McCarthy, K.C., for the defendants.

H. D. Gamble, K.C., for the plaintiff.

HON. MR. JUSTICE GARROW:—The only question which we are called upon to determine upon this appeal is, was there sufficient evidence proper for the jury upon which they might reasonably find, as they did, and in my opinion there was, except perhaps as to the motorman's negligence, and particularly as to its bearing upon the result. The latter, especially, I, upon the evidence, greatly doubt; so much so that if the case depended upon that finding alone I could not approve. But as the earlier findings are in themselves, if sustained, sufficient, I do not further discuss that aspect of the case.

The full and careful charge of the learned Chief Justice was not objected to.

In opening his address the learned Chief Justice said: "The main facts are simple. Any difficulties there are in the case arise from the view you take of the somewhat conflicting evidence by expert witnesses, and how far you give credit to the testimony generally of the witnesses who have been called."

This extract seems to furnish not only the keynote of the charge but of the case itself. It is not in dispute that something unusual occurred on the occasion in question, the outward manifestation of which was a loud explosion followed by flame and smoke, and by panic on the part of the passengers, in the course of which the plaintiff fell or was forced out of the car and received severe injuries.

Nor is it, I think, in serious dispute that the seat of the defect was in the controller, resulting in the formation of a short circuit. Both Mr. McCrae and Mr. Richmond seem to agree upon that, the former saying: "in my opinion if you take the area of the controller,—confined in the controller, is the area in which the accident occurred," and the latter, that the controller must have been in a defective