

Domino of Canada.**SUPREME COURT.**

B.C.]

ALLEN v. THE KING.

[March 31.

Criminal law—Conviction for murder—Trial—Evidence improperly admitted—Substantial wrong to prisoner—New trial—Criminal Code, s. 1019.

Sec. 1019 of the Criminal Code provides that a convicted prisoner shall not be granted a new trial for improper admission of evidence or some illegal proceeding at the trial unless the Court of Appeal is of opinion that "some substantial wrong or miscarriage was thereby occasioned."

Held, Davies and Idington, JJ., dissenting, that in order to obtain a new trial under this provision the prisoner is not required to demonstrate that substantial wrong or miscarriage was in fact occasioned by the evidence improperly admitted or the illegal procedure; it is sufficient if it appears that such wrong or miscarriage might have been occasioned.

Per Davies and Idington, JJ., that if evidence was improperly admitted at the trial in this case, which is doubtful, it could not under the circumstances have affected the verdict.

New trial ordered.

J. A. Ritchie, for appellant. McKay, K.C., for respondent.

Ont.]

TOMS v. TORONTO Ry. Co.

[April 3.

Damages—Negligence—Physical injuries—Mental shock—Severance of damages.

Plaintiff was riding in a street railway car when it collided with a train. He was thrown over to the back of the seat facing him but was able to leave the car and start to walk to his place of business, but had only proceeded a short distance when he collapsed and had to be taken home in a cab. He was laid up for several weeks and on the trial of an action against the Railway Co. for damages one doctor giving evidence testified that the physical injury he had received was the exciting cause of his condition, while others ascribed it to mental shock. Negligence on the part of the company was not denied, but the trial Judge was asked to direct the jury to separate the damages for the two, but refused. A verdict for plaintiff was upheld by the Court of Appeal.