

and he would have been shoved from the car whether it was standing or moving.

11. The appellants further submit that there is no evidence to justify the finding of the Jury that the car was not properly inspected, and the appellants submit that in any case they were entitled to have their witnesses' memory refreshed by the inspection sheets, which are the only means that a man has of refreshing his memory where numbers of cars are inspected night after night, and he is called upon to testify in regard to it a year or more after the accident.

10 12. For the above reasons the appellants submit that the action should be dismissed, or that, in any event, they should be permitted to have the action retried and the evidence which was rejected properly put before the Court.

D. L. McCARTHY,
Of Counsel for the Appellants.

REASONS AGAINST APPEAL.

1. On the 10th of August, 1910, between 5 and 6 o'clock in the evening the plaintiff was a passenger on an east bound open King street car of the defendants to which a trailer was attached. Just as the car had passed
20 Sherbourne street several explosions occurred in the front vestibule of the car followed by smoke and fire.

2. The plaintiff was sitting at the extreme end of the seat where any one on the same seat seeking to alight would have to pass him. The seats all faced in the direction the car was going, and there was no space between the plaintiff's knees and the back of the next seat for any one to pass.

3. The cars were crowded and when the explosions took place and the smoke began to come back into the body of the car, the cars not being stopped but continuing on their way, the passengers became alarmed,
30 some of them panic stricken, and those in the same seat with the plaintiff forced their way off the car and, as there was no room for them to pass between the plaintiff and the back of the next seat and he being an elderly man, they carried him with them and forced him off on to the pavement, the result being that he was very seriously hurt, having several ribs broken, his hip and knee injured, the latter permanently, besides receiving other painful, but not serious injuries.

4. The plaintiff in his statement of claim charges, among other acts of negligence on the part of the defendants:

(1) Defective condition of the controller in construction or state
40 of repair.

(2) Defective form and design of the car, of which particulars were furnished, which in part are as follows:

Insufficiency of provision for electrical transmission in portions of the equipment circuits—insufficiency of provision for insulation between portions of the equipment circuits, defective insulation of and