

MIDDLETON, J.

DECEMBER 6TH, 1918.

**BARR v. TORONTO R.W. CO. AND CITY OF TORONTO.*

Street Railway—Injury to Person in Highway by outward Swing of Rear Steps of Car in Rounding Curve—Duty of Conductor—Negligence—Proximate Cause of Injury—Damages—Claim against City Corporation—Costs.

Action by a husband and wife to recover damages arising from an injury to the wife, upon McCaul street, in the city of Toronto, after she had alighted from a car of the defendant company, by reason, as they alleged, of the negligence of the servants of the defendant railway company or of those of the defendant city corporation in charge of a waggon owned by the corporation, which was standing in the street.

The action was tried without a jury at a Toronto sittings.

William Proudfoot., K.C., for the plaintiff.

H. H. Dewart, K.C., and G. S. Hodgson, for the defendant railway company.

C. M. Colquhoun, for the defendant city corporation.

MIDDLETON, J., in a written judgment, said that McCaul street is very narrow; upon it double tracks are laid; cars running upon it from the north turn east upon Queen street; the distance from track to kerb is 12 feet; and, as a car rounds the curve, the steps at the rear of the car swing 6 feet over the narrow roadway. On the day of the occurrence which gave rise to the action, a team and large waggon owned by the defendant city corporation was removing snow from McCaul street, and at the time of the accident was standing in the road just above Queen street, while being loaded.

The plaintiff and her sister-in-law had been passengers on the car, and had alighted for the purpose of making a transfer to a Queen street car, and would have gone from the McCaul car west to the sidewalk and then across Queen street, if the conditions had been normal. There was, however, a pool of water and slush between the place where they alighted from the car and the sidewalk. To avoid this, they passed north, between the car and the waggon to reach ground from which snow and slush had been removed. The space between the car and the waggon was between 3 and 4 feet. When the plaintiff and her companion were about opposite the middle, the car started round the curve, and the rear steps, swinging sideways, passed a few inches from the waggon; before the plaintiff could escape, she was struck and injured.