MAY 3RD, 1906.

DIVISIONAL COURT.

SHEA v. TORONTO R. W. CO.

Street Railway—Injury to Passenger Thrown from Car—Negligence — Contributory Negligence — Evidence for Jury—Operation of Car—Duty to Passenger Standing on Platform.

Appeal by defendants from judgment of MABEE, J., at the trial at Toronto, refusing to nonsuit plaintiff after the jury had disagreed. Plaintiff was injured by being thrown from a Queen street west car, near Euclid avenue, by reason, as alleged, of a violent jerk of the car, which was the negligence alleged. Plaintiff was standing on the back platform smoking, and had a parcel in one hand; he had rung the bell, intending to get off at Manning avenue.

H. S. Osler, K.C., for defendants, contended that plaintiff should have held on to the rail, being in a position of danger, and the evidence shewed negligence and contributory negligence so interwoven that the case should not have been submitted to the jury.

H. D. Gamble, for plaintiff, contra.

THE COURT (MEREDITH, C.J., BRITTON, J., MAGEE, J.), held that the Judge was right in refusing to nonsuit. It was a proper inference that the plaintiff was on the platform by the permission of defendants. It may be said that the standard of duty of defendants is higher in regard to a passenger upon the platform; because the danger is greater, the defendants should be more careful. But it is not necessary to go that far. There was ample evidence to warrant a jury in finding that the car was negligently operated, and that in consequence of the negligent operation plaintiff was thrown from the car. The alleged contributory negligence of plaintiff was clearly a question for the jury. It was for the jury to say whether plaintiff's own negligence was the proximate cause of or so contributed to the accident that it would not have occurred without it.

Appeal dismissed with costs.