

from the car when he was injured. He was in the act of alighting; but, when he was confronted by the danger which he apprehended from the passing motor vehicle, he desisted from the act of alighting and endeavoured to get back on the car; and it was while so doing that he was injured.

It would be, I think, altogether too narrow a view to take of the definition of "passenger" which the policy contains, to limit the right to the double indemnity to cases in which the assured is actually in or upon the vehicle by which he is being or is to be or was conveyed. The cases cited by Mr. Dewart shew that a person travelling by rail remains a passenger until he has safely alighted from the vehicle, and is a passenger while in the act of entering or getting on or into the vehicle by which he is to be carried. The plaintiff's feet, no doubt, had reached the pavement, but he had not completely or safely alighted from the car; and, in my opinion, he was still a passenger, within the meaning of the policy, when he met with his injuries. There is a further ground. . . . Although the plaintiff had reached his destination and intended to terminate his journey at the point where he attempted to alight, he had the right, when he was confronted with the danger which he apprehended from the motor vehicle, or indeed if he was so minded for any reason, to get upon the car again and to be carried to a place where he might alight with safety; and that, putting his case on the evidence at the lowest, he was doing when he was injured. . . .

[Reference to *Powis v. Ontario Accident Co.*, 1 O.L.R. 54, as decisive in favour of the plaintiff, upon this view.]

The plaintiff is, in my opinion, entitled to judgment declaring that the injuries which he received . . . resulted in temporary total disability, within the meaning of the policy, and that they were received while he was a passenger, within the meaning of the policy, and to recover from the defendants for the aggregate of the weekly sums of \$50 which were payable at the commencement of the action, with costs. As only two periods of thirteen weeks elapsed between the date of the accident (17th August, 1910), and the date of the issue of the writ (15th March, 1911), there can be recovery in this action for only twenty-six payments, and the sum for which judgment is to be entered will be \$1,300.