

reached. It is pretended that Mr. Graham, having been insured and having been paid, suffered no loss, had no claim against anyone, and had no rights to assign. But plaintiff urges his own rights as well as those of the insured. The point has been often raised here and elsewhere, and as often judged against the pleader. I need only refer to *Richelieu & Ontario Navigation Co. v. Lafrenière et al.* as a leading case; 2 *Leg. News*, p. 204.

It remains to examine the evidence. The carter was loading a box on his truck as the car came along the street. He declares that his horse's head reached over the track. So alarmed did the man become that he ran out toward the street, waving his arms and shouting, "Stop, you can't pass—I will turn my horse." The car did not stop. He asserts that his horse, being struck, started back and drove the truck through the window. Mr. Kellert, an on-looker, gives general corroboration. Dr. Berthelot, a passenger, saw the carter waving his arms in warning and thinks he shouted. His impression is that the car touched the horse's head; if it did not, it was next thing to it. Mr. H. J. Farmer was on the opposite side of the street and happened to be watching the carter at his work. The horse saw he was going to be struck and swerved backwards. If he had not done so there would have been a collision. There could not have been a foot between the car as it passed and the horse's head.

For the defence, three witnesses swear that the horse was not struck. The conductor and Cloran, previously an employee and on the car, put the distance at two feet. Walker, who was at the time a policeman and on the front platform, makes it from two to three feet. Mr. Robillard, the company's superintendent, shows by measurements that the distance must have been about three and a half feet, if the wheels were against the sidewalk. Whether they were or not is not proved.

The conductor admits that he heard the carter shout, but says it was too late to stop. They were moving at the ordinary pace, "bien tranquillement," and they often passed horses in a like position more quickly. The

carter was negligent, he says, because he ought to have been at his horse's head. The conductor himself was taking up fares at the moment and had his back to the horses. Cloran has a bad opinion of the horse. He had never seen it before, but it looked "as if you could not come within five feet of its head." If the horse were so restless in appearance, an increased responsibility lay on the car driver to approach it all the more carefully. But the carter swears that his horse has reached the mature age of fourteen years, has been nearly all its life in the shafts of a truck, and is, as it certainly ought to be, perfectly quiet.

Whether the horse was struck or not, if its fright was caused by the company's negligence, then legal responsibilities exist for all the immediate consequences. Apart from its common law liability the company is subjected to the liabilities imposed under the city by-law. Section 30 provides that "the conductors shall keep a vigilant watch to avoid all manner of accident, and stop the cars whenever they shall perceive on the track, or moving in the direction of the track, any person, cattle, vehicle, or other obstruction likely to cause an accident;" and section 34 makes the company responsible "for all damages arising from the manner the cars or sleighs used by them shall be run or driven."

A tramway company is, in the enjoyment and exercise of its franchise, bound to recognize the rights and necessities of public traffic. The conductors and drivers have need to exercise not only ordinary, but special care in the discharge of their duties. Special duties imposed by statute or city ordinance must be more strictly observed than those not so imposed. They are part of the considerations taken for benefits bestowed. Moreover, a tramcar is of great weight, carries with it great momentum, cannot be turned away to escape a collision and ought to be under constant control. A damage which is the natural consequence of a default to run their car in a thoroughly reasonable and proper manner involves the liability to pay it.

In the belief of the carter, and of Mr. Farmer, whose evidence impressed me