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COURT OF APPEAL.

NOVEMBER 19TH, 1912.

FLEMING v. TORONTO RAILWAY CO.

4 O. W. N. 323.

*Negligence—Passenger on Street Car—Explosion from Controller—Panic—Personal Injury—Defective Apparatus—Inspection—Res Ipsa Loquitur—Evidence of Experts.*

Action for damages for personal injuries sustained by plaintiff while a passenger on defendants' car, owing to a panic caused by the explosion of a controller thereon. The jury found that the accident was caused by the negligence of defendants in using a re-built controller in a re-built condition, not properly inspected, that the motor-man was negligent in not applying the brake which would have prevented the accident, and there was no contributory negligence.

This was the second trial of the action, the judgment in favour of plaintiff at the first trial having been set aside and a new trial directed on account of the improper exclusion of evidence: see 20 O. W. R. 827; 25 O. L. R. 317.

COURT OF APPEAL, *held*, that there was no reason to disturb the jury's findings and, in any case, the controller being under the control of defendants, the doctrine of *res ipsa loquitur* applied.

*Scott v. London Docks*, 3 H. & C. 596, at p. 601, referred to. Appeal dismissed with costs.

Appeal by the defendants from the judgment at the trial before Meredith, C.J., and a jury in favour of the plaintiff.

The action was brought by the plaintiff to recover damages said to have been caused to him while a passenger upon the defendants' railway owing to the defendants' alleged negligence.

The case has been twice tried, resulting each time in a judgment in favour of the plaintiff.

The jury, in answer to questions, found that the plaintiff's injuries were caused by the negligence of the defendants, such negligence consisting in using a rebuilt controller in a defective condition, and not properly inspected; the