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No. 7.

COURT OF APPEAL.

OCTOBER 29TH, 1910.

*TOMS v. TORONTO R. W. CO.

Damages—Personal Injuries—Traumatic Neuresthenia—" Railway Shock"—Jury.

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., in favour of the plaintiff, upon the findings of a jury, in an action for damages for injury sustained by the plaintiff by the negligent operation of a car of the defendants in which he was a passenger on the 7th October, 1908. The negligence was admitted. The jury assessed the damages at \$1,500.

The only question upon the appeal was whether there could be a recovery in respect of injuries of a nervous origin.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, and MAGEE, J.J.A.

D. L. McCarthy, K.C., for the defendants, contended that there could be no recovery, and that the question of damages should have been submitted to the jury as in *Henderson v. Canada Atlantic R. W. Co.*, 25 A. R. 437, affirmed 29 S. C. R. 632.

C. A. Masten, K.C., and M. C. Cameron, for the plaintiff.

GARROW, J.A.:—In his charge the Chief Justice said: "I was requested to put a question to you to separate the injuries as between the physical and the nervous injury. I declined to do that for one reason, a very sufficient one, among others, that the question of physical injury is one of very doubtful meaning. There

* This case will be reported in the Ontario Law Reports.