

SECOND DIVISIONAL COURT.

DECEMBER 30TH, 1916.

## \*CLAREY v. OTTAWA ELECTRIC R. W. CO.

*Street Railway—Operation of Car—Injury to Passenger—Negligence—Contributory Negligence—Evidence—Findings of Fact of Trial Judge—Appeal.*

Appeal by the defendants from the judgment of MIDDLETON, J., who tried the action without a jury at Ottawa, in favour of the plaintiff in an action for damages for injuries sustained by him by reason of the negligence of the defendants in the operation of one of their street railway cars, as he alleged.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, KELLY, and MASTEN, JJ.

Taylor McVeity, for the appellants.

W. J. Kidd, for the plaintiff, respondent.

MEREDITH, C.J.C.P., read a judgment, in which he said that the plaintiff's story was that he ran to catch the car, got upon the lower step of the entrance, but could go no farther because it was crowded in front of him; that, when he was in this position, a woman came down the steps to leave, and in that way did leave the car, getting out by the entrance way instead of the exit way; that he and the man in front of him made way to let the woman pass; that, holding on with his right hand to a handle-bar, he swung back, taking his left foot off the step, but keeping his right foot on it; and that, after the woman had safely alighted, and before he had got back to his former position, the bell was rung to start the car—"the car gave a snap," and his right foot slipped off the step, and he was thrown down and his shoulder dislocated.

There was no finding of the trial Judge that there was any negligence in the starting of the car. The signal to start was given by the conductor in the usual manner, and was seen and heard by the plaintiff; and the whole evidence as to the way in which the car came into motion was not such as to indicate any unusual violence which would amount to actionable negligence if the proximate cause of any injury.

The judgment of the trial Judge was based upon the finding that the conductor of the car was guilty of negligence in starting the car when the plaintiff was in the position of having one hand on the handle-bar, one foot on the step, and the other off it.