

Ont.]

[Nov. 18, 1907.]

HARRIS v. LONDON STREET RAILWAY COMPANY.

*Negligence—Street Railway Co.—Rules—Contributory negligence.*

Rule 212 of the rules of the London Street Ry. Co. provides that "when the power leaves the line the controller must be shut off, the overhead switch thrown, and the car brought to a stop . . ." A car on which the lights had been weak and intermittent for some little time passed a point on the line at which there was a circuit breaker when the power ceased to operate. The motorman shut off the controller, but instead of applying the brakes, allowed the car to proceed by the momentum it had acquired and it collided with a stationary car on the line ahead of it. In an action by the motorman claiming damages for injuries received through such collision,

*Held*, that the accident was due to the motorman's disregard of the above rule and he could not recover. Appeal dismissed with costs.

*Blackstock*, K.C., for the appellant. *Hellmuth*, K.C., and *Ivey*, for respondents.

B.C.]

RED MOUNTAIN RY. CO. v. BLUE. [Nov. 20, 1907.]

*Operation of railway—Unnecessary combustible matter left on "right of way"—Damages by fire—Issue as to point of origin of fire—Evidence—Charge to jury—New trial—Practice—Admission of evidence on appeal—Supreme Court Act, ss. 51, 73.*

At the trial the controversy turned upon the question whether or not the place of the origin of the fire which caused the damages complained of was within the limits of the defendants' "right of way," which they were, by the provisions of the Railway Act, 1903, obliged to keep free from unnecessary combustible matter, and the jury found that it did, but the charge of the judge seemed calculated to leave the impression that any space from which trees had been removed, under the powers conferred by section 118(j) of that Act, might be treated as included within the "right of way."

*Held*, that, in consequence of the want of more explicit di-