

himself. After reaching the platform he became unconscious, and remembered nothing until about two hours later, when he found himself lying on the ground near the railway track.

The train was a vestibuled one; and, according to the testimony of the plaintiff, the vestibule was open when he went out on the platform; and his theory of the accident was that he fell from the platform; but, according to a written statement made by him on the 5th September, 1909, when he got on the platform he saw one of the vestibule doors open, and got down on the first step, taking hold of the bars, after which he remembered nothing until he regained consciousness.

The trial was begun with a jury, but only the assessment of damages was left to them, and they found \$1,200.

R. G. Smythe, for the plaintiff.

I. F. Hellmuth, K.C., and G. A. Walker, for the defendants.

MEREDITH, C.J.:— . . . The account given by the plaintiff in the written statement appears to me the more probable one, and it is much more likely that, when he became unconscious, and his hold upon the handles was loosened, he was thrown off by the rapid movement of the train, than that, standing upon the platform itself, he fell or was thrown off; and I find the fact to be as put in the statement.

I am unable to see how, on this state of facts, the plaintiff can recover. The proximate cause of the accident was his own voluntary act, and, but for the unfortunate fit of unconsciousness which came upon him, his standing on the step would not have resulted in any injury to him. It was daylight, and he must have seen that the platform was open on the side to which he went for the purpose of vomiting; indeed, the very purpose for which he went out of the coach indicated that he expected to find the platform open. . . . This ground alone is, in my opinion, sufficient for the determination of the case adversely to the plaintiff; but, if it be not, I am unable to find that the defendants were guilty of any negligence entitling him to recover.

The vestibule is designed to promote the comfort of passengers going from one car to another, and probably to keep out dust and cinders, rather than for the safety of the passengers. There was nothing in the nature of a trap into which the plaintiff was led. The condition of the platform was apparent to any one who went upon it, as the plaintiff went, in daylight, and the use of it as it was would not have been attended with danger but for the act of