

It was contended by the respondent that the election was saved by sec. 204 of the Act.

Although the deputy returning officer said that when taking the ballot box from the poll to the office of the town clerk, he only called at his own house for a few moments, his taking the ballot box there was violating a very stringent provision of the Act, for which, on conviction, he would be liable to imprisonment for 6 months and to a fine of \$400; this, together with the finding by the County Court Judge that a large number of the ballots had been tampered with after the ballot papers had been placed in the ballot box, renders it impossible to say that such irregularities did not affect the result of the election.

The appeal must be dismissed with costs.

Fleming, Wigle, & Rodd, Windsor, solicitors for relator.
J. W. Hanna, Windsor, solicitor for respondent.

MAY 17TH, 1902.

DIVISIONAL COURT.

O'HEARN v. TOWN OF PORT ARTHUR.

Street Railways—Negligence—Operation of Car—Collision—Contributory Negligence—Duty of Driver of Vehicle—Proximate Cause—Nonsuit.

Appeal by defendants from judgment of BRITTON, J., entered upon the findings of the jury in an action by plaintiff, a teamster in the town of Port Arthur, for damages for bodily injuries caused by being run into by a street car of defendants, owing to alleged negligent running at a rapid and dangerous speed.

The plaintiff, at 4 p.m., was driving northward along the west side of Cumberland street, on which the track is, and was crossing it to go along Ambrose street, which runs into Cumberland street at right angles, when the collision took place.

The following questions were submitted to the jury:

1. Were the defendants guilty of negligence in running their car on the occasion of the accident at too great speed?
2. Were the defendants guilty of negligence in not so running their car as to be able to control it or stop it in time to prevent a collision with the plaintiff, who was seen by the motorman, and who, for all the motorman knew, might turn down as he did actually turn down Ambrose street?
3. Was the gong sounded by the motorman as the car approached the plaintiff on Cumberland street?
4. Could the plaintiff by the exercise of ordinary care have avoided the collision?
5. What damages has plaintiff sustained?