

STREET, J., held that in endeavouring to pull on board a car a person who was merely standing on the platform and not attempting to get on board, the conductor was not acting within the scope of his duty as a servant of the company: *Coll v. Toronto R. W. Co.*, 25 A. R. 55, and cases there cited. Action dismissed with costs.

German & Pettit, Welland, solicitors for plaintiff.
DuVernet & Jones, Toronto, solicitors for defendants.

MAY 15TH, 1902.

DIVISIONAL COURT.

REX v. ST. PIERRE.

Municipal Corporation—By-law—Transient Traders—Trader Living at Hotel and Taking Orders for Clothing to be Made of Sample Shewn—Not within Transient Trader Clauses of Municipal Act—Conviction—Statute Taking Away Right to Certiorari.

Motion by defendant to make absolute a rule *nisi* quashing a conviction of defendant by the police magistrate for the city of Ottawa, for offering goods for sale contrary to a transient traders' by-law of the city of Ottawa.

E. E. A. DuVernet, for defendant, contended that the sales were not at Ottawa; that the defendant was in the same position as any other commercial traveller; and was not a transient trader.

A. B. Aylesworth, K.C., for prosecutor, contended that the defendant was properly convicted; that the question as to where the sales took place was one for the magistrate; and, at all events, that the *certiorari* should not have been granted, the Act 2 Edw. VII. ch. 12, sec. 14, having taken away the right to *certiorari*.

DuVernet, in reply, contended that *certiorari* will be granted for want of jurisdiction, notwithstanding such enactment: and that there is want of jurisdiction when the evidence does not disclose an offence within the statute.

The judgment of the Court (BOYD, C., MEREDITH, C.J.) was delivered by

BOYD, C.—There being no statutory provision as regards transient traders, similar to that as regards hawkers, that the description is to include those who carry or expose samples or patterns of goods to be delivered afterwards, the defendant does not come under the category of transient traders. No goods were offered for sale. Samples of goods were exhibited suitable for clothing, and the transaction was carried out by the choice of some particular pattern in Ottawa, notification of which was sent to Montreal, whereupon the garment was made out of that material, and forwarded to the person giving the order at Ottawa, who then made payment on delivery. The collocation of the words in the