

MARCH 6TH, 1912.

*WALLACE v. EMPLOYERS' LIABILITY ASSURANCE CORPORATION.

Accident Insurance—Temporary Total Disability—Double Indemnity—"Riding as a Passenger"—Injury to Assured in Alighting from Street Car.

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., 25 O.L.R. 80, ante 232.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

N. W. Rowell, K.C., for the defendants.

D. Urquhart, for the plaintiff.

MEREDITH, J.A.:—The first question is, whether the plaintiff, at the time of the injury, was "riding as a passenger in or upon" the street car: and is not the broader one, whether, at that time, he might be considered merely a passenger as against the railway company.

He had been a passenger riding in and upon the street car, but had reached his destination, the car had been stopped to let him down, and he had alighted upon the public road, severing entirely all actual connection between himself and it; but, being put in imminent danger by a rapidly approaching motor car, he caught at the street car again, though it had by that time been started again, and was in motion, and, in endeavouring to escape injury from the motor car by getting upon the street car, fell, or was thrown down, coming in contact with the moving motor car, and so was severely injured. His purpose in trying to get upon the street car again was not to resume his journey—that was ended—nor was it to begin a new journey; it was solely to escape injury by the negligently driven motor car. It is idle to say that there was negligence on the part of the railway company, if that would make any difference: how could their servants foresee and be blameable for the misconduct of the driver of the motor car: it was at the plaintiff's instance, and upon his signal, that the street car was stopped at this alighting place; an entirely proper place to stop for that purpose; the danger was something not foreseen by the plaintiff or any one else, because doubtless not apparent until the motor car was almost upon him; avoidable, with any sort of care on the part of its driver, up to almost the last moment.

*To be reported in the Ontario Law Reports.