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No. 40.

COURT OF APPEAL.

JUNE 15TH, 1910.

*BURMAN v. OTTAWA ELECTRIC R. W. CO.

Street Railways—Injury to Passenger—Negligence—Cause of Injury—Sudden Jerk in Starting Car—Withdrawal from Jury by Charge—Premature Starting of Car—Misdirection—Finding of Jury—New Trial—Objection not Taken at Trial—Real Question not Passed upon.

Appeal by the defendants from the judgment of BRITTON, J., upon the findings of a jury, in favour of the plaintiff.

The action was brought to recover damages said to have been caused to the plaintiff while a passenger on the defendants' street railway by the negligent operation of the car.

On the 2nd May, 1909, the plaintiff, an elderly but active woman, with her daughter-in-law, entered a car, and before she had reached a seat was thrown down backwards and seriously injured.

The cause of the fall alleged in the statement of claim was "the sudden jerking forward of the car;" and this was supported by the evidence of the plaintiff herself, of her daughter-in-law, and of Mrs. Theresa Smith, who was standing in the street and saw the car starting.

Evidence was called for the defence to shew that the car was new and in good condition, that only the lowest notch was used in putting on the power, and that there was no unusual jerk.

The learned Judge in charging the jury practically withdrew from them the question whether there was negligence of the motor-man in starting the car with a jerk, but left it to the jury to say whether there was negligence of the conductor in giving the signal to start too soon.

* This case will be reported in the Ontario Law Reports.