

FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

**SQUIRES v. TORONTO R.W. CO.*

Street Railway—Injury to Person Attempting to Get on Car—Negligence of Conductor—Car Started after Intention Perceived—Contributory Negligence—Moving Car—Emergency—Finding of Trial Judge—Reversal on Appeal.

Appeal by the plaintiff from the judgment of the County Court of the County of York dismissing the action, which was brought to recover damages for personal injury sustained by the plaintiff by reason of the negligence of the defendants' servants operating one of their street-cars, in starting the car as the plaintiff was stepping into it, whereby she was thrown to the ground.

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

T. N. Phelan, for the appellant.

Peter White, K.C., for the defendants, respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that the trial Judge did not accept the testimony of the defendant as to the position in which she was when the car had started, but accepted that of two passengers on the car, who stated that the appellant attempted to get on the car after it had started.

It was not open to question that it was the intention of the defendant to take passage on the car; that it had stopped at a usual stopping place; and that the conductor of the car knew or ought to have known that the appellant's purpose was to take passage on the car.

According to the testimony which was accepted, the appellant had approached the car at a somewhat rapid pace, and had reached a point opposite the rear vestibule and about 6 inches from it, and was in the act of putting out one of her hands to take hold of one of the bars of the vestibule, when the car was started; that the appellant then attempted to get on the car, which was moving slowly, and in making the attempt was thrown from the car.

If, as had been found, the conductor knew or ought to have known that the appellant's intention was to take passage on his car, he was negligent in giving the signal to start before he had given the intending passenger a reasonable opportunity to get on the car, or until the intending passenger had evidenced the intention not to take passage by it.

The trial Judge, in dealing with the question of contributory negligence, did not, as he should have done, take into consider-