and injured. The place where the plaintiff attempted to alight and fell was about 100 feet before the stopping place was reached.

The only evidence was the story of the plaintiff himself. After giving the signal, he said, he went to the back of the car, to the exit-door; he stood for a short time; the conductor then opened the door, and he (the plaintiff) immediately stepped out. He admitted that, if he had looked before stepping out, he probably would have noticed that the car was in motion; he did not look, but, upon the opening of the door, at once stepped out. From the way in which he fell, he thought that the car must have been travelling at about 5 miles per hour.

Gazey v. Toronto R.W. Co. (October, 1917), 40 O.L.R. 449, and Grand Trunk R.W. Co. v. Mayne (November, 1917), 56 Can. S.C.R. 95, considered and distinguished.

The door was opened when the car was not at a stopping place; and the question to be solved was, whether the car was moving so fast that the motion would be perceptible to any reasonably careful passenger. This apparent motion would negative the invitation to alight which might be implied from the opening of the door. This question was one for the jury. There might be a case where the motion was obviously so apparent that no reasonably careful passenger would think of alighting; but, in the circumstances here disclosed, there was a question of fact to be passed upon by the jury—one that could not be summarily dealt with by the Judge.

There should be a new trial, and the costs of the former trial and of this appeal should be costs to the plaintiff in the cause.

It was said that, immediately after the plaintiff had fallen, the conductor alighted and helped him to his feet, and that then a conversation took place in which the conductor said: "It was my fault; I should not have opened the door, but I thought the car had stopped." The conductor was not a person whose statement would bind the defendant company; he was not the agent of the company for the purpose of making any admissions. His statement, if admissible in evidence at all, should be received only on the ground that it formed part of the res gestæ; and it must be borne in mind that, if it could be received when tendered by the plaintiff, it would be equally admissible if tendered by the defendants. The statement said to have been made by the conductor formed, in truth, no part of the res gestæ—it was a mere narrative or discussion anent a thing then past. The principle upon which such evidence can be admitted is clearly stated in Garner v. Township of Stamford (1903), 7 O.L.R. 50. The trial Judge excluded evidence which the plaintiff proposed to give of the conductor's statement, and the ruling was right.