

MACLAREN and MAGEE, JJ.A., agreed with FERGUSON, J.A.

HODGINS, J.A., also read a judgment. He did not agree that there should be a new trial upon the grounds stated above; but was of opinion that the defendant might have been prejudiced in regard to the amount of the damages found by the jury by something that occurred at the trial when a question was asked by the foreman as to the defendant's financial means. The jury might well have thought, from what was said, that the defendant was of such large means as to prefer not to state his condition. There should be a new trial, confined to an assessment of damages; costs of the former trial and of the new trial to be costs in the cause.

Appeal allowed and new trial directed (HODGINS, J.A., dissenting).

FIRST DIVISIONAL COURT.

MAY 17TH, 1918.

*DOWSON v. TORONTO AND YORK RADIAL R. W. Co.

Street Railway—Injury to Passenger Alighting—Negligence—Finding of Jury—Explanation to Trial Judge—Reconsideration by Jury—Substituted Finding—Acceptance by Trial Judge—Dangerous Place to Alight—Height of Lowest Step of Car from Ground—Order of Railway and Municipal Board—Non-compliance with—Proximate Cause of Injury.

Appeal by the defendants from the judgment of LATCHFORD, J., upon the findings of a jury, in favour of the plaintiffs, for the recovery of \$2,901.55 and costs in an action for damages for personal injuries sustained by the plaintiff G. G. Dowson in alighting from a car of the defendants at the corner of Heath and Yonge streets, Toronto, by reason, as the plaintiffs alleged, of the negligence of the defendants' servants in charge of the car, and for money necessarily expended by the plaintiff E. C. H. Dowson, husband of the plaintiff G. G. Dowson, in consequence of her injuries.

The appeal was heard by MACLAREN and MAGEE, JJ.A., KELLY, J., and FERGUSON, J.A.

D. L. McCarthy, K.C., for the appellants.

R. H. Parmenter, for the plaintiffs, respondents.