

placed it there, was not proved, and the lack of such proof constitutes a serious defect in the plaintiff's case; for the mere temporary presence of a truck on the platform would not in itself necessarily be any evidence of negligence, even in favour of a passenger, to whom a much higher duty is owing. But, assuming that evidence had been given that the truck had been carelessly left where it was, under circumstances of which a passenger might have complained, I would still be of the opinion that the plaintiff could not complain, unless upon proof that the defendants or their servants had negligently done, or avoided doing, something to bring about the contact which injured him. It certainly was not negligent, nor evidence of negligence, to start up the train in order to proceed to its destination at the tank. The plaintiff was perfectly safe on the platform after he knew that the order to start had been given, and nothing required him to jump upon the moving train.

The defendants were not, I think, bound to anticipate that he would probably do such a foolish thing. And there is no evidence that, after he had voluntarily placed himself in that perilous position, the defendants could, by the exercise of reasonable diligence, have done anything to prevent the accident.

The appeal fails, and should, in my opinion, be dismissed with costs, if demanded.

APRIL 18TH, 1910.

*RE ONTARIO BANK.

BANK OF MONTREAL'S CLAIM.

Banks and Banking—Contract between Banks—Advances Made by one Bank to the other—Pledge or Sale of Assets—Bank Act, secs. 99-111—Application of—Construction and Validity of Contract—Claim Made in Winding-up of Bank—Powers of Bank—Authority of Directors.

Appeal by the liquidator of the Ontario Bank and by W. J. McFarland and others, shareholders of the bank, from an order of BRITTON, J., affirming the decision or ruling of an Official Referee with respect to the mode of proof of the claim preferred by the Bank of Montreal as a creditor of the Ontario Bank.

In the course of the inquiry by the Official Referee into the claim of the Bank of Montreal, a question was raised as to the form of the claim and as to the nature of the proof in support of

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