

1901  
 \*Nov. 26.  
 1902  
 \*Feb. 20.

WILLIAM H. HAWLEY, ADMINIS-  
 TRATOR OF THE ESTATE OF MUR-  
 DOCH L. HAWLEY, DECEASED } APPELLANT;  
 (PLAINTIFF)..... }

AND

GEORGE WRIGHT (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Negligence—Personal injuries—Use of elevator—Contributory negligence.*

H. entered an elevator in a public building after inquiring of the boy in charge if a certain tenant was in his office and being told he was not. He remained in the elevator while it made a number of trips in response to calls, and had been in it over ten minutes when a call came from the fifth floor. The elevator went up and the passenger who had rung entered. H. at first making no attempt to get out, the operator then shoved to the door of the elevator and at the same time started the wheel which had to be completely turned around to move the elevator. The time required to turn the wheel would be sufficient to permit of the closing of the door if shoved simultaneously with the turning of the wheel. While it was being turned H., without giving warning, tried to get out through the door and, the elevator being then descending, he was caught between it and the floor and injured so that he died soon after. In an action by his administrator against the owner of the building :

*Held*, that the accident was entirely due to the conduct of H. himself, and the owner was not liable.

**APPEAL** from the decision of the Supreme Court of Nova Scotia (1) affirming the verdict at the trial for the defendant.

The material facts are stated in the above head-note and fully set out in the judgment of the court on this appeal.

\*PRESENT :—Taschereau, Sedgewick, Girouard and Davies JJ.

[Mr Justice Gwynne was present at the hearing but died before judgment was delivered.]

*O'Connor* for the appellant.

*Harris K.C.* for the respondent.

The judgment of court was delivered by :

1901  
 HAWLEY  
 v.  
 WRIGHT.

SEDGEWICK J.—This is an action brought by the administrator of one Murdoch L Hawley against one George Wright, claiming damages by reason of the death of the former through the alleged negligence of Wright's servant in the operation of an elevator in a building in the City of Halifax, known as the "St. Paul's Building," in Halifax, N.S., and owned by the respondent.

The building has five stories or flats, and the elevator runs from the first floor to the fifth. On this floor, Mr. Russell, K.C., had an office, on the morning of the accident, the twenty-ninth of August, 1898.

The deceased came into the hallway of the building on the first or ground floor where the elevator and stairway are situated and asked the boy in charge of the elevator if Mr. Russell was in his office, and was told that Mr. Russell was not in. After that, he stepped into the elevator, which was stationary in the lower hall with the door open, and some three or four minutes after he did so the boy in charge of the elevator, in answer to a call, took the elevator up to one of the upper flats and brought down a passenger to the ground floor. The elevator remained standing some time at the ground floor with the door open, until another call took it up again to one of the upper floors. Another passenger was brought down to the ground floor, the door was again opened and the elevator remained standing with the door open for some minutes as before. This operation was repeated several times, the deceased standing in the elevator and riding up and down with the operator each time

1902

HAWLEY

v.

WRIGHT.Sedgewick J.

and making no request to be landed on the fifth or any other floor.

Some ten or fifteen minutes after the deceased entered the elevator, a call for the elevator came from the fifth floor and the operator took the elevator to that floor. When the elevator left the ground floor for this trip, the deceased was standing behind the operator in the right hand corner of the elevator as you enter it, that is to say, he was standing at the back of the elevator directly in front of the door. When the elevator reached the fifth floor, Mr. Hanright was there waiting and he entered the elevator and gave an order indicating his wish to be carried to the third floor. At this time the deceased was standing in the left hand corner of the elevator directly behind the operator, that is to say, he had, while the elevator was ascending from the first to the fifth floor, left his position in front of the door, and had stepped into the corner of the elevator which is furthest from the door.

Mr. Hanright says that he went into the elevator immediately that it had stopped at the fifth floor, while the operator says that Mr. Hanright waited a moment to see if any one got out of the elevator before he entered. As soon as Mr. Hanright entered the elevator and gave his orders to be conveyed to the third floor, the operator, not expecting the deceased to get out, shoved to the door of the elevator and at the same moment put his hand on the wheel to start it (that being the usual way of operating the elevator).

The evidence shows that before the elevator can be started this wheel must be turned completely around, and that, while the wheel is being so turned, the door, if not interfered with, would, if shoved to simultaneously with the starting of the wheel, be closed before the elevator started.

After Mr. Hanright entered the elevator and gave his orders and while the door was being closed and the wheel turned, the deceased, without giving any warning, passed around behind Hanright and sought to reach the landing. The cage, which was then descending, caught him on the shoulders and he was injured before the elevator could be stopped. He subsequently died, and this action is brought by his administrator against the owner of the building to recover damages.

1902  
 HAWLEY  
 v.  
 WRIGHT.  
 Sedgewick J.

The action was tried before the Honourable Mr. Justice Townshend with a special jury in October, 1900. The jury had a view of the premises and saw the elevator in operation. The questions submitted to the jury with their findings thereon are as follows:

1. Was the defendant guilty of negligence in respect—
  - (1) In the construction of the elevator?—Ans. No.
  - (2) In the operation of the elevator?—No answer.
2. Was the deceased, at the time of the accident, being carried in the elevator for business with a tenant in the building, or was he there, at that time, for his own pleasure, simply by permission of the operator?—Ans. Was loitering.
3. Was the operator an employee of the defendant for the purpose of operating elevator?—Ans. Yes, he was.
4. Did the deceased in ascending to the fifth floor request the operator to land him there?—Ans. No, he did not.
5. Was the accident due to the carelessness of the deceased in attempting to get out at the time he did?—Ans. Yes, it was.
6. Could the operator, at the time, have done any act more than he did to prevent the accident?—Ans. No, he could not.
7. Was it the duty of the operator to ascertain from the passenger his destination? If so, was the operator negligent in not doing so under the circumstances of this case?—Ans. No, it was not.
8. To what damages is plaintiff entitled?—Ans. \$500.
9. In what proportion are the damages to be divided?—Ans. (1) Father, \$250. (2) Mother, \$250.

Upon these findings judgment was entered for the defendant. From these findings and the order for judgment the plaintiff appealed to the Supreme Court

1902  
 HAWLEY  
 v.  
 WRIGHT.  
 Sedgewick J.

of Nova Scotia. The appeal was heard by Weatherbe J., Ritchie J. and Graham E. J. The majority of the court (Weatherbe J. dissenting), dismissed the appeal and affirmed the judgment of Mr. Justice Townshend. The plaintiff now appeals from this judgment to the Supreme Court of Canada.

The only persons present at the time of the accident were the deceased, the operator and Mr. Hanright. The two latter gave evidence as to what occurred. Blakeney, the operator, says :

The deceased came in about 11.30 in the morning, and asked me if Mr. Russell was in. I told him he was not. I was in the elevator and he in the hall when he asked me. After that he stepped into the elevator. After three or four minutes a ring came. I went up with elevator to get a passenger. Brought him down to ground floor. Deceased went up and came down in elevator. I stayed on ground floor till another ring came. I had opened the door when I reached the ground floor, and left it open for some minutes. I received another ring and went up again and brought down another passenger. Deceased went up and came down with me. I opened and left open the door when I came down, and deceased still remained in the elevator. I am sure of these two rings, but do not know how many more before I got ring from fifth floor, from Mr. Hanright. When I got Mr. Hanright's ring I went up from the ground floor. I was then waiting for orders. Deceased went up with me. When I reached the fifth floor I opened the door to let Mr. Hanright in. *He did not come in but waited to see if anybody came out.* It is customary for the person in the elevator to come out before the other comes in. Hanright came in. *I did not expect any one to get out at the fifth floor.* Hanright told me as he came in to take him to the third floor. He spoke as if in a hurry. *I put my hand on the wheel, and my other hand to shut the door at the same time. This is the usual way.* I shoved the door to close it, and next thing I heard was Hanright shouting. The elevator is worked by a wheel. *To start elevator the wheel must first be turned all the way round. During this time, if nothing interferes, the door would close to.* I then heard a second shout from Hanright. I then looked up and saw the deceased, and then stopped the elevator at once. I did not see the deceased till Hanright called the second time. Hanright entered cage on nearest side to me. To stop elevator, wheel must be turned all the way round. I stopped it as quickly as I could.

Again :

He made no request to me to take him up to the fifth or any other floor. \* \* \* \* *It was about ten or fifteen minutes from the time deceased first came in until I got the ring from Mr. Hanright.*

Hanright, a witness for the plaintiff, speaking of what took place after the elevator reached the fifth floor, says :

I went immediately into the elevator, and the boy and another person were in it as I entered. I was in a great hurry, and intended going to third floor below, and as I was entering the elevator, I said to the boy, "third floor," or to that effect. *The other person was standing behind the boy.* As I was entering I first became aware of another person being in the elevator, and *this person passed around me and made for the door of the landing, which was then open.* As I entered I faced the door of the landing, the boy standing as usual at the wheel, and facing the landing. *The moment I said to the boy "third floor" he turned the wheel to descend.* \* \* \* \* It all occurred in the fraction of a moment.

Again :

As the boy started to descend when I got in, he reached out his hand to shut the door in the landing. He did so simultaneously, and it came in contact with the deceased who was attempting to pass out. The door struck the deceased, who was trying to push it back with his arm in his struggles to get out.

It further appeared in evidence, that the deceased, immediately after the accident had stated that the operator was not to be blamed for the accident, as it was his own fault and this was repeated to the operator himself, when in the hospital shortly before he died.

Now upon this evidence, we are of opinion that the findings of the jury were correct.

The question of negligence in the matter of operation might have properly been withdrawn from the jury as there was no evidence of the operator's negligence at all. Whether the deceased was a licensee or invitee or a mere "loiterer" or trespasser, it does not in my view in the present case, make any difference, inasmuch as the deceased being in the cage with the

1902

HAWLEY  
v.

WRIGHT.

Sedgewick J.

1902

HAWLEY

v.

WRIGHT.

Sedgewick J.

assent of the operator, there was a duty on the latter's part to be as careful in regard to him as to any other passenger. But here, as the jury properly found, there was no failure to perform that duty.

It is a matter of common knowledge that where a railway train or a tram-car or an elevator having known terminal points, arrives at one of those points, those who are in must first get out, before those who are out get in. Convenience has made this a "rule of the road," just as much as in driving, in Nova Scotia, you pass by the left, while, in the upper provinces, you pass by the right. If one violates this rule and an accident happens to him in consequence, it is absurd to say that he has an action against the person with whose vehicle he came into collision. The jury must necessarily find that the fault was all his own.

In the present case, when the cage came to its destination on the fifth floor,—its upper terminal point,—it was the duty of the deceased, if he intended to alight to present himself for that purpose and to get out or to endeavour to get out, or at least to notify the operator of his desire to get out, before any one came in. Not having done this, or intimated to the operator his wish to alight, it was a proper conclusion on the part of the operator, that he did not intend to get out, and he was, therefore, justified in closing, (or attempting to close) the door and in starting the cage on its downward trip. It is perfectly clear to my mind that it was only after the operator was about to descend and after Mr. Hanright entered, that a sudden impulse moved him to rush to the then closing doors and madly attempt an exit.

This, as I regard it, is the reason why, after the accident, he took all the blame upon himself, wholly exonerating the boy. He knew that he had violated the ordinary recognised rule. He so expressed him-

self and was apparently anxious that his mistake should not be attributed to or bring misfortune to another.

1902  
 HAWLEY  
 v.  
 WRIGHT.

Sedgewick J.

In my view of the case the judgment of the court below (as delivered by Mr. Justice Ritchie,) was right, and the appeal should be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant : *A. F. O'Connor.*

Solicitor for the respondent : *W. E. Thompson.*

---