

O'CONNOR v. HALIFAX TRAMWAY CO.

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*Dec. 1, 2.

*Dec. 22.

Street railway—Carriage of passengers—Contract—Continuous passage.

APPEAL from a decision of the Supreme Court of Nova Scotia(1) affirming the judgment at the trial in favour of the plaintiff.

The plaintiff, O'Connor, with friends, wished to proceed to a certain part of Halifax and when a car came along labelled as going in the required direction, they boarded a trailer attached to it which, however, was not so labelled. Owing to a regatta there was an unusual amount of travel on the street cars that day and when the car containing plaintiff had proceeded a certain distance it was stopped and the passengers informed that it would not go farther in that direction. The plaintiff insisted on his right to be carried to his destination in that car, refused a transfer and hired a cab. He then brought an action against the Street Railway Co. for damages.

The trial judge and the Supreme Court of Nova Scotia sitting *en banc* held that there was no obligation on the company's part to carry him to his destination on that particular car, that it was his duty to inquire of the conductor and ascertain where such car was going and he could not recover.

*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Idington and MacLennan JJ.

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Newcombe K.C. and *W. B. A. Ritchie K.C.* for the appellant.

Mellish K.C. and *Lovett (Murray with them)* for the respondents.

The appeal to the Supreme Court of Canada was dismissed, *Idington J.* dissenting, and the following judgments were delivered.

DAVIES J.—For the reasons given by *Townshend* and *Graham JJ.* in the court below I think this appeal should be dismissed.

I merely wish to guard myself against being committed to the opinion that all the rules applicable to the carriage of passengers on ordinary railway trains are applicable to passengers carried on city electric cars, or that the American cases cited in the elaborate opinion of *Graham J.* on this point are necessarily applicable to the facts of this case.

IDINGTON J. (dissenting).—The name of the respondents indicates their business. It is carried on in Halifax.

The appellant, accompanied by his wife and a friend, desiring to return home, some considerable distance from where they found themselves, saw on that part of the respondents' track which was beside them, and formed part of a belt line, two cars standing to receive passengers. The front car had inscribed on front and in rear thereof the words "Quinpool Road." The rear car attached thereto was a trailer. The appellant was a resident of the city, and knew that cars so marked were accustomed to carry passengers by a continuous journey along the

company's track, on what was known as the belt line of the system.

Appellant's home was within a short distance of this belt line and was passed by the cars marked "Quinpool Road." The appellant with his wife and friend got into this trailer. They were drawn for a mile and a quarter along this belt line in the direction they expected to go, but away further from their home and from Quinpool Road than when they started, and then turned out, as the company desired the cars to return to the point these cars and people had started from.

The appellant had bought tickets for himself and party, and on each of these tickets were the words "Halifax Electric Tramway Company, Limited, F. A. Huntress, manager."

It is admitted these tickets entitled him to ride all round the belt line in question. Obviously the whole contract—and it is admitted there was a contract—was not contained in the words written on the ticket or formed by the purchase of a ticket. Some tickets conferred one, and others another right when used. That right depended on facts outside the ticket.

Then where do we find the necessary evidence beyond the ticket to shew the contract?

The obvious answer is, in the invitation by the company to ride and the acceptance thereof by the passengers.

How is the invitation extended? It is universally found to exist, in street railway traffic, in the shape of some word or words or sign to indicate the destination or the particular part of the line a car is proposed to be run over. This abbreviated or sign language is highly useful, is well understood by the

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masses of the people desiring to travel by such cars, and facilitates the use of such means of transportation.

Its adoption and long continued use by the respondents and recognition by the appellant and others gives to the interpretation of it, when acted upon by any one possessed of a ticket, as binding and definite a contract as can possibly be framed.

The interpretation of the words "Quinpool Road" are not in the slightest doubt in this case. It was as plain in its meaning, to those daily accustomed to its use, as if a long contract had been written out signifying that the car on which it was inscribed was intended to run, and should run, along the belt line, from the starting point at which a passenger entered it, till it returned there, and to pass Quinpool Road in its journey.

It never was intended to mean anything else than that.

Its use by the company on a car, not intended to go round the belt, not intended to get a foot nearer Quinpool Road than where it started from, should have been guarded against.

They seek to excuse themselves by saying that there was by reason of a regatta attracting a large crowd more than usual travel. They therefore used this "Quinpool Road" car to help to handle the crowd by taking them by means of these cars to the distributing point a mile and a quarter from where the appellant got on board.

It became the duty of the respondents in such a case before using this car purely for such local purpose to have taken down their sign.

If immovable, the price of a ticket, spent in buy-

ing a strip of cotton, and a few cents more in writing thereon the direction and distance of the car's intended run, for that day, would have served, when properly used, to keep off the car gentlemen like appellant, who had no desire to expose himself and wife to the pelting rain then falling.

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Of course its use might also have lessened the receipts. I assume it was not for a fraudulent purpose, but through pure neglect this trouble was not taken.

The idle pretext, that the company set up, of appellant's knowledge that such uses had been made by the company of such cars on former occasions when the crowd to be carried was great, should not, on this evidence, avail anything. There is no evidence to support it.

Evidently the appellant had not the slightest suspicion that such was to be the course on this occasion or he would not have set foot in the car. What could he gain? To get on a car to be dumped off it, and wait where so dumped off till the right car caught up, instead of getting on a right one at the start seems unlikely to have been done intentionally.

Appellant swears he was about to take a cab when his wife saw and pointed out this "Quinpool Road" car, and on her proper and natural suggestion they entered.

It does not seem to me to be possible to attribute to the appellant any negligence or any improper motive. He was a man of such intelligence in the midst of such surroundings, as to forbid us assuming either to have been the cause of the mishap.

So plain, so palpable, a neglect of duty, on the part of the respondent company, and so liable to mis-

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lead, was met only by offering a transfer to another belt line car leaving the parties to stand in the rain until one came.

The contract was broken when the appellant was turned out of the car.

If the appellant had not been misled and had known that he had to face the inconvenience in question he, presumably, never would have taken a seat in the car. He was probably better off waiting for one that really was a belt line or Quinpool Road car at the starting place than where he was left, further from Quinpool Road than when he had started.

It seems, in all the discussion relating to a transfer, to be forgotten that in the ordinary course of things, there were no transfers for such a service as going round the belt, and that it was because appellant did not want to be troubled with transferring in such weather, that he took a "Quinpool Road" car, on the invitation of the company, as security against any need for a transfer.

I do not in this view need to follow the matter further. In regard, however, to the allegation of the company that trailers are not used with Quinpool Road cars it is met by the oath of the plaintiff that he had seen them and it is only partially denied, and it was much more reasonable to expect that for an occasion needing extra effort it would be put in use by a trailer attached to a Quinpool Road car serving for the whole length of the belt line than that so misleading a sign would be kept up only to run a fourth of the distance and never come within miles of the Quinpool Road district.

The trailer moves where the motor car goes and not elsewhere. The appellant is just as much entitled

to bring his action as if he had seated himself in the motor car. If the financial condition of the respondents is so distressing that they cannot keep a sufficient supply of properly marked cars to meet the exigencies of a crowded day just as well as poor people keep rain coats for the exceptional day, they are much to be pitied. We cannot, however, allow such natural sympathy as poverty evokes to interpret this contract.

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The contention that any intending passenger, seeking a car marked with a sign that means, according to the usual language of the locality and the ordinary custom of the road, that it is running to or past a well-known point, is negligent, unless he ask some conductor or other authority, is a proposition that is not, I think, maintainable in law, and I venture, with great respect, to say not in accord with the average sense of those of the reasonably intelligent people who are expected to be guided by the sign.

The safety of the travelling public requires that the conductor of these cars be assisted, as much as possible, by an intelligent use of those signs, by all intending passengers, so that he be not too much distracted, by such inquiries, from his other duties.

I think the appeal ought to be allowed with costs and the judgments below set aside and judgment entered for the plaintiff for \$1 with full costs.

Appeal dismissed with costs.

Solicitor for the appellant: *H. C. Borden.*

Solicitor for the respondent: *R. H. Murray.*