

## HAMILTON STREET RAILWAY CO. v. MORAN. 1895

*Negligence—Street railway—Accident to workman on track—Contributory negligence.* \*May 20.

APPEAL from a decision of the Court of Appeal for Ontario, reversing the decision of the Divisional Court in favour of defendant company and ordering a new trial.

The plaintiff was a workman in the employ of the company and was injured by a car striking him while working on the track. His action was to recover damages for such injury, and the company defended on the ground that he could have escaped being struck if he had been reasonably careful in looking out for cars passing the track. The trial judge gave judgment for the company holding that plaintiff was the cause of his own misfortune and could not hold defendants liable therefor. This judgment was affirmed by the Divisional Court but reversed by the Court of Appeal, which ordered a new trial.

The Supreme Court, without reserving judgment, affirmed the decision of the Court of Appeal, Gwynne J. dissenting, and on counsel for the company stating that a new trial was not desired, judgment was ordered to be entered for plaintiff with \$500 damages, the amount assessed by the jury at the trial.

*Appeal dismissed with costs.*

*W. Nesbitt* for the appellants.

*Staunton* for the respondent.

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\*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.