

THE TORONTO RAILWAY COM- } APPELLANT;
 PANY (DEFENDANT)..... }

1901
 *Mar. 28.
 *April 1.

AND

ROBERT SNELL (PLAINTIFF)..RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Negligence—Electric railway—Motorman—Workmen's Compensation Act
 —Injury to conductor.*

The motorman of an electric car may be a "person who has charge or control" within the meaning of sec. 3 of the Workmen's Compensation Act (R. S. O. [1897] ch. 160) and if he negligently allows an open car to come in contact with a passing vehicle whereby the conductor, who is standing on the side in discharge of his duty, is struck and injured the electric company is liable in damage for such injury.

Judgment of the Court of Appeal (27 Ont. App. R. 151) affirmed.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment at the trial in favour of the plaintiff.

The facts presented on the appeal were as follows :

On the 29th of June, 1899, the respondent, Snell, was in the employ of The Toronto Railway Company, as a conductor on their line of street railway in the City of Toronto. For thirteen years he had been employed in a similar capacity not only by the defendants, but by the company who owned the franchise before it came into the hands of the defendants by purchase from the City of Toronto. On the evening of the 29th of June, Snell was performing his duties as conductor on one of the open cars of the defendants operated by electricity on Queen Street East, a leading thoroughfare in the City of Toronto. In these open cars the

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

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seats are placed across the car and there is no aisle or passage for the conductor to pass from the rear to the front of the car for the purpose of collecting fares or performing his other duties. The only way the conductor can go from one end of the car to the other to collect the fares is by a side step or running board extending along the outside of the car. About 8.15 on the evening in question, Snell was standing on the running board and had just collected a fare from a passenger. On the track in front of the car and going in the same direction was a wagon with a load of furniture. This wagon was in the act of pulling off the track and had pulled off a sufficient distance to clear the car but not to clear Snell standing on the running board. The motorman, without slackening speed, ran the car at the rate of eight miles an hour past the wagon. The wagon or the load came in contact with Snell, throwing him violently to the ground. It is for the injuries sustained by him by being thus knocked off the car that he brought action against the defendants.

The respondents' cause of action arises under R.S.O. ch. 160, section 3, subsection 5, The Workmen's Compensation for Injuries Act: "Where personal injury is caused to a workman by reason of the negligence of any person in the service of the employer, who has charge or control of any points signal, locomotive, engine, machine, or train upon a railway, tramway or street railway, the workman, or in case the injury results in death the legal personal representatives of the workman, and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of, the employer nor engaged in his work."

The question for decision was:

Was the motorman an employee in charge of a machine or engine on the appellant's street railway under this section?

The case was tried with a jury who found that the motorman was guilty of negligence. Judgment was entered for the plaintiff and the damages assessed at \$1,200. This judgment was affirmed by the Court of Appeal, from whose judgment the defendant appealed to the Supreme Court.

Bicknell for the appellant.

Robinette and Godfrey for the respondent.

THE CHIEF JUSTICE and SEDGWICK, KING and GIROUARD JJ., were of opinion that the appeal should be dismissed with costs, for the reasons given in the Court of Appeal.

GWYNNE J.—There is no dispute as to the facts in this case. The only question in the appeal is whether or not the motorman on an electric street railway is the person having control of the movement of the train of which he is the motorman within the meaning of the Workmen's Compensation Act. The learned trial judge held that he was; the defendants, on the contrary, insists that he is not, and that the conductor, the injured man in the present case, is. Apart from this contention, no objection whatever has been taken to the learned trial judge's charge to the jury, and none indeed could be, for in every particular it was a most fair charge. In so far as the present case is concerned, that is to say as to an injury alleged to have been caused by the manner in which the train is propelled by the motorman, he is necessarily the person having control of the car within the meaning of the statute referred

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to. There being no other point raised in this case, the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *James Bicknell.*

Solicitors for the respondent: *Robinette & Godfrey.*
