

WINNIPEG ELECTRIC COMPANY }
 (DEFENDANT) } APPELLANT; 1936
* Feb. 17.
 AND
 LILIAS ROADHOUSE (PLAINTIFF) RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Negligence—Passenger injured through slipping on roadway when alighting from defendant's bus—Condition of place where bus stopped—Bus not drawn up to sidewalk—Findings by jury of negligence of defendant and against contributory negligence of passenger—Evidence—Defendant's duty and liability in law.

APPEAL by the defendant from the judgment of the Court of Appeal for Manitoba (1) allowing the plaintiff's appeal from the judgment of Adamson J. (2).

On February 19, 1934, the plaintiff was a passenger on one of the defendant's buses in the city of Winnipeg, and when alighting therefrom slipped on the roadway and fell, receiving injuries, in respect of which she brought the action, claiming damages. At the trial, before Adamson J. with a jury, the jury found the defendant guilty of negligence

to the extent that the bus was not drawn into the curb to allow the plaintiff to alight. Taking into consideration where the bus did stop and where the plaintiff did alight, the road was in a dangerous and slippery condition.

* PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Davis JJ.

(1) 43 Man. L.R. 184; [1935] 2 (2) 43 Man. L.R. 184, at 184-
 W.W.R. 194; [1935] 3 D.L.R. 187.
 246.

1936
 WINNIPEG
 ELECTRIC
 Co.
 v.
 ROADHOUSE.

They found damages in the sum of \$2,500. They found the plaintiff not guilty of contributory negligence. The trial judge (1) held that there was no evidence "that the motorman acted unreasonably or otherwise than as a prudent man would have acted," that "there was no known or obvious danger at this landing place," that "there was nothing to indicate that there was more danger here than at any other place where he might have stopped," that the case fell fairly within *Brunstermann v. Winnipeg Electric Ry. Co.* (2), that s. 66 of *The King's Bench Act*, Statutes of Manitoba, 1931, c. 6, does not preclude the trial judge from entering a proper verdict, and one in accordance with the law, and one that will be the final judgment, that upon the jury's finding of fact there was no legal liability; and he accordingly dismissed the action with costs. The Court of Appeal (3) (Dennistoun and Trueman JJ.A. dissenting) allowed the plaintiff's appeal with costs and ordered that judgment be entered in favour of the plaintiff for \$2,500 and costs.

On the defendant's appeal to the Supreme Court of Canada, after hearing argument of counsel for the appellant, the members of the Court retired for consultation, and on their returning to the Bench, the Court, without calling on counsel for the respondent, delivered judgment orally, dismissing the appeal with costs. The Chief Justice stated that Mr. Schroeder had argued the appeal with his accustomed earnestness and thoroughness; that the members of the Court had considered the matter and were quite satisfied that the majority of the Court of Appeal were right; that there was evidence to go to the jury, that the verdict of the jury was sufficient and that there was no ground upon which it could properly be set aside.

Appeal dismissed with costs.

W. F. Schroeder for the appellant.

J. T. Thorson K.C. for the respondent.

(1) 43 Man. L.R. 184, at 184-187. (2) 31 Man. L.R. 212; [1921] 2 W.W.R. 21.
 (3) 43 Man. L.R. 184; [1935] 2 W.W.R. 194; [1935] 3 D.L.R. 246.