1929
*Feb. 8.
*May 27.

WINNIPEG ELECTRIC COMPANY (DEFENDANT) ..... } APPELLANT;

AND

FANNY ZEIDEL (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Street Railways—Negligence—Person waiting on platform on street to board approaching street car injured through the car striking the platform—Platform provided and maintained and kept in repair by municipality—Liability of street railway company.

Plaintiff, while standing on a platform or "island" at a city street corner in order to board an approaching street car of the defendant, was thrown off her feet and injured by the car striking the platform. The platform was provided and maintained and kept in repair by the

*PRESENT: Duff, Mignault, Newcombe, Rinfret and Smith JJ.

(1) (1868) L.R. 3 H.L. 330.

city. Plaintiff claimed damages against the defendant street railway company.

Held, reversing judgment of the Manitoba Court of Appeal, 37 Man. R. 412, that defendant was not liable. It could not be said that defendant owed a duty to plaintiff to see that the platform was maintained "at a safe distance from the rail," or "to take care that it could be used in safety by the persons who went upon it" waiting for and entering defendant's cars. The platform was one of the appurtenances of the public street. It was, as such, under the care of the municipality, and persons using it, as a stopping place while crossing the street, or for waiting for a street car or other public conveyance, were doing so under such guarantees of safety as the municipal control and the duties incident to that control might provide. In no pertinent sense could it be said that such persons used the platform "at the invitation of the defendant." The fact that defendant made the platform one of its stopping places involved no assurance by it that the municipality had discharged its duty in respect of maintenance and repair.

APPEAL by the defendant from the judgment of the Court of Appeal for Manitoba (1) dismissing its appeal from the judgment of Kilgour J. (2) who held that the plaintiff was entitled to recover damages against the defendant for personal injuries sustained by her when the platform or "island" stationed beside the defendant's street car track on the corner of Jarvis Avenue and Main Street in the City of Winnipeg, on which she was standing in order to board an approaching street car of the defendant, was struck by the step (which had not been let down and was in its closed or vertical position) of the said street car, causing the plaintiff to be thrown off her feet and injured. The platform was provided and maintained and kept in repair by the City of Winnipeg.

The appeal was allowed with costs.

W. N. Tilley K.C. for the appellant.

S. Abrahamson for the respondent.

The COURT.—We have come to the conclusion that appeal should be allowed. The Court of Appeal rightly treated the question of onus of proof as of no importance. The respondent, no doubt, established a *prima facie* case; but the Court of Appeal rightly considered that, on the facts in evidence, the motorman could not be held to be chargeable with negligence and that the car was of normal dimensions.

(1) 37 Man. R. 412; [1928] 2 W.W.R. 601.

(2) 37 Man. R. 412; [1928] 1 W.W.R. 435.

1929

WINNIPEG ELECTRIC CO. v. ZEIDEL.

THE COURT

The grounds upon which that court proceeded appear from the judgments of Dennistoun and Trueman, JJ.A., in these passages. Mr. Justice Dennistoun says:—

> I think there was negligence on the part of the defendant company in permitting the platform to occupy a position on the highway for a considerable time, with only one-half inch of lateral clearance. It should have been realized by the company that a very slight movement of the platform would bring it into collision with a passing car. It is well known to judges of this Court that these platforms are frequently collided with by motor cars. That being so the company should have taken precautions to see that the platform in question was placed by the city, or their own workmen, at a safe distance from the rail.

The same learned judge also agrees with the reasons of Trueman, J.A., who expresses this view:—

> The defendant having knowledge that the platform was in the way and likely to be displaced by motor traffic, it plainly was its duty to take care that it could be used in safety by the persons who went upon it by its invitation.

The substantial controversy on the appeal concerns the question whether the appellant company did owe a duty to the respondent to see that the platform was maintained "at a safe distance from the rail" as Dennistoun, J.A., puts it; or, as Trueman, J.A., puts it, "to take care that it could be used in safety by the persons who went upon it" waiting for and entering the company's cars. Dennistoun, J.A., it will be perceived, states the rule in narrower terms than those employed by Trueman, J.A.; but, with great respect, we are not aware of any basis of legal principle upon which the rule, stated in either form, can stand.

The platform was one of the appurtenances of the public street; it was, as such, under the care of the municipality, and persons making use of it, as a stopping place while crossing the street, or for entering an auto bus or a street car, were doing so under such guarantees of safety as the municipal control and the duties incident to that control might provide. Persons waiting for a street car or other public conveyance made use of it just as in other circumstances they would have used a sidewalk or pavement.

It seems impossible to hold that in any pertinent sense such persons used the platform "at the invitation of the company." The fact that the company, whether under compulsion of municipal by-law or without any such compulsion, made the platform one of its stopping places, involved no assurance by it that the municipality had discharged its duty in respect of maintenance and repair. It might with equal force be affirmed that such an assurance

is implied in the fact that at street corners and other convenient places, the company sets up marks showing where its cars are brought to a stop in order to receive or discharge passengers.

The appeal involves no question as to the responsibility of the company in respect of the safe carriage of its passengers. That responsibility, no doubt, is in full force when the passenger is actually being received, as such, upon a car. But its responsibility for the safe carriage of its passengers is not susceptible of being enlarged to the indefinite extent required to make it applicable to a person standing on a street, waiting for a car which has not yet come to a stop.

The appeal should be allowed with costs here and in the Court of Appeal, and the action dismissed with costs.

Appeal allowed with costs.

Solicitors for the appellant: *Anderson, Guy, Chappell & Turner.*

Solicitors for the respondent: *Abrahamson & Greenberg.*