

1912

*Feb. 26.

WINNIPEG ELECTRIC RAILWAY CO. v. HILL.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Negligence—Electric railway—Breach of company's rules.

APPEAL from a decision of the Court of Appeal for Manitoba(1), maintaining the verdict for the plaintiff (respondent) at the trial.

The plaintiff, a physician practising in Winnipeg, was called to another town late at night and hired a special car from the defendant company to bring him back. While returning in this car the motorman allowed the conductor to do the driving and, through the negligence or incompetence of the latter, a collision occurred with another car by which the plaintiff was injured. On the trial of an action claiming damages for such injury the jury found that the motorman, in exchanging places with the conductor, was acting in breach of his duty, and that the failure of the servants of the company to perform their duties constituted negligence on the part of the company. A verdict was entered for the plaintiff with damages assessed at \$2,000.

The Court of Appeal, in maintaining this verdict, held that though the conductor may not have been acting as a servant of the company when the accident took place, the act of the motorman in abandoning his

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

post was negligence for which the company was responsible.

The defendants appealed to the Supreme Court of Canada which, after hearing counsel on their behalf, and without calling on counsel for the respondent, dismissed the appeal.

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Appeal dismissed with costs.

Chrysler K.C. for the appellants.

E. A. Cohen for the respondent.