

1907  
 \*Nov. 12.  
 \*Nov. 13.

JOHN HARRIS (PLAINTIFF) . . . . . APPELLANT;  
 AND  
 THE LONDON STREET RAILWAY } RESPONDENTS.  
 COMPANY (DEFENDANTS) . . . . . }

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Negligence—Street Railway Co.—Rules—Contributory negligence—  
 Motorman.*

Rule 212 of the rules of the London St. Ry. Co. provides that “when the power leaves the line the controller must be shut off, the overhead switch thrown and the car brought to a stop \* \*.” A car on which the lights had been weak and intermittent for some little time passed a point on the line at which there was a circuit breaker when the power ceased to operate. The motorman shut off the controller but, instead of applying the brakes, allowed the car to proceed by the momentum it had acquired and it collided with a stationary car on the line ahead of it. In an action by the motorman claiming damages for injuries received through such collision, *Held*, that the accident was due to the motorman’s disregard of the above rule and he could not recover.

**APPEAL** from a decision of the Court of Appeal for Ontario setting aside a verdict for the plaintiff at the trial and dismissing the action.

The action was brought by a motorman to recover compensation for injuries he received in consequence of the car which he was driving coming into collision with another that was at rest on the track owing to failure of the power. The power on plaintiff’s car had been weak for some time and when he passed a point on the line where there was a circuit breaker it failed

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

entirely. He shut off the controller but did not apply the brakes, and the car went on until the collision occurred, though it was admitted that it could have been stopped in time to prevent it.

Rule 212 of the company's rules requires the motorman to bring the car to a stop when the power leaves the line, and the plaintiff admitted that he would have done so if he had had any idea there was a car in front of him.

The trial judge left the questions of negligence of the defendant company and contributory negligence of the plaintiff to the jury, who found in favour of the plaintiff on both grounds and a verdict was entered accordingly with damages assessed by the jury at \$1,500. The Court of Appeal set the verdict aside and dismissed the action on the ground that the accident was entirely due to the plaintiff's failure to stop the car when the power failed as provided by the rule. The plaintiff appealed to the Supreme Court from the latter decision.

*Blackstock* K.C. for the appellant.

*Hellmuth* K.C. and *Ivey* for the respondents were not called upon.

The judgment of the court was delivered by

MACLENNAN J.—This is an appeal from the judgment of the Court of Appeal for Ontario, reversing a judgment at the trial for the plaintiff, in an accident case.

The plaintiff was the motorman in charge of a car of the defendants, which ran into another car standing upon the track, whereby the plaintiff was injured.

1907

HARRIS

v.

LONDON  
STREET  
RY. CO.

Maclennan J.

We agree with the Court of Appeal that, upon the plaintiff's own evidence, the accident was due to his own disregard of a rule of the company, which it was his duty to observe, and that the case should have been withdrawn from the jury, at the trial, and the action dismissed.

The appeal will be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *Thomas Wells.*

Solicitors for the respondents: *Ivey & Dromgole.*

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