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IN THE PRIVY COUNCIL

23, 1952 No. 3 of 1952.

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

B E T W E E N

MARVIN SIGURDSON
(Plaintiff) Appellant

- and -

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
(Defendant) Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
-9 OCT 1956
INSTITUTE OF
LEGAL STUDIES

44498

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IN THE PRIVY COUNCILNo. 3 of 1952ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIAB E T W E E N

MARVIN SIGURDSON (Plaintiff)

Appellant

- and -

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED (Defendant)
RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE

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IN THE PRIVY COUNCIL

No. 3 of 1952

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

B E T W E E N MARVIN SIGURDSON
(Plaintiff) Appellant

- and -

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
(Defendant) Respondent

10

RECORD OF PROCEEDINGS

No. 1

ENDORSEMENT ON WRIT

In the Supreme
Court of
British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N MARVIN SIGURDSON Plaintiff

- and -

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
Defendant

No. 1
Endorsement on
Writ.
20th November,
1948.

Writ issued the 20th day of November, 1948.

20

The Plaintiff's claim is for damages suffered by the Plaintiff on or about the 6th day of August, A.D. 1948, in the City of Vancouver, Province of British Columbia, when the Plaintiff's automobile was struck by a street car owned and operated by the Defendant, which collision caused the Plaintiff serious personal injuries and damages to his automobile, and which personal injuries and damages were caused by the negligence of the Defendant, its servants or agents; and for costs.

In the Supreme
Court of
British Columbia

No. 2

AMENDED STATEMENT OF CLAIM

No. 2

Amended State-
ment of Claim.

20th October
1949.

Writ issued the 20th day of November 1948.

1. The Plaintiff is a millwright and resides at 165 East 41st Avenue, City of Vancouver, Province of British Columbia.

2. The Defendant is a body corporate carrying on business at 425 Carrall Street, City of Vancouver, Province of British Columbia.

3. On or about the 6th day of August, A.D. 1948, the Plaintiff was operating his automobile and proceeding in an easterly direction along Broadway, in the City of Vancouver, Province of British Columbia. 10

4. While proceeding as aforesaid, and shortly after passing the intersection of Broadway and Heather Streets, in the City of Vancouver aforesaid, the Plaintiff's automobile was struck by a streetcar, which said streetcar was owned by the Defendant, and operated by the Defendant, its servants, Agents or workmen. 20

5. As a result of the aforesaid collision, the Plaintiff's automobile was damaged beyond repair, and the Plaintiff suffered severe personal injuries, loss and damage.

6. The aforesaid collision was caused solely by the negligence of the Defendant, its servants, agents, employees, or workmen, particulars of which negligence are as follows:-

(a) In failing to keep or maintain a proper or any lookout; 30

(b) In failing to keep the said streetcar under proper or any control;

(c) In driving and operating the said streetcar at an excessive or improper rate of speed;

(d) In giving no, or no sufficient warning of the approach of the said streetcar; 40

- (e) In failing to see the Plaintiffs automobile either reasonably or at all, or alternatively, if the Defendant, its servants, agents or employees saw the said automobile, in taking no or not sufficient precautions to avoid colliding with it;
- (f) In failing to apply the brakes of the said streetcar effectively or at all, or to slacken speed, or to stop in time or in order to avoid a collision with the Plaintiff's automobile, or alternatively the brakes of the said streetcar were defective or ineffective;
- (g) In failing to yield the right-of-way to the Plaintiff's automobile;
- (h) In failing to drive or operate the said streetcar in a careful or prudent manner, having regard to all circumstances, including the rate of speed and the weight and size thereof, the nature, use and condition of the said streetcar, or, alternatively, the mechanism of the said streetcar was faulty, or, alternatively the said streetcar was improperly designed for the use for which it was being put, or, in the further alternative, a combination of the foregoing;
- (i) In failing to drive or operate the said streetcar in a careful or prudent manner, having regard to all the circumstances, including the traffic which was actually on Broadway, or might have reasonably been expected to be thereon at the time, and so as not to endanger the safety of persons or property, and in particular the property and the person of the Plaintiff.
- (j) In failing to train the motorman of the streetcar involved in the accident either adequately, carefully, properly or at all before entrusting the operation of the said streetcar to him.
- (k) In entrusting the operation of the said streetcar to a servant, agent, employee or workman who had not been trained, either adequately, carefully, properly or at all in the operation of a streetcar of the type involved in the said accident.

In the Supreme
Court of
British Columbia

—
No. 2

Amended State-
ment of Claim,
20th October
1949 -
continued.

10

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30

40

In the Supreme
Court of
British Columbia

No. 2

Amended State-
ment of Claim,
20th October
1949 -
continued.

7. As a result of the aforesaid collision, the Plaintiff suffered severe personal injuries, damage and loss as follows:-

- (a) Left hand crushed and permanently deformed and disabled;
- (b) Left arm severely bruised;
- (c) Severe shock;
- (d) Automobile destroyed;
- (e) Clothing destroyed.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT 10

- (a) Special damages in the sum of \$3,854.27; and such other special damages as may be incurred;
- (b) General damages;
- (c) Costs of this action;
- (d) Such other and further relief as in the premises may be deemed meet.

DATED AT VANCOUVER, British Columbia, this 20th day of October, A.D. 1949. 20

Signed Harry C.F. Spring.
Solicitor for Plaintiff

To: The Defendant.

This Statement of Claim is filed and delivered by Mr. Harry C.F. Spring of the firm of Crux, Spring & Crux, Solicitors for the Plaintiff, whose place of business and address for service is 201 Bentall Bldg., 999 W. Pender St., Vancouver, British Columbia.

No. 3

STATEMENT OF DEFENCE

In the Supreme
Court of
British Columbia

No. 3

Statement of
Defence.1st November
1949.

The Defendant says that:-

1. The Defendant denies each and every allegation contained in paragraph 3 of the Statement of Claim.
- 10 2. The Defendant denies each and every allegation contained in paragraph 4 of the Statement of Claim, and without limiting the generality of the foregoing denies in particular that any street-car struck the Plaintiff's automobile, or any automobile.
- 20 3. The Defendant denies each and every allegation contained in paragraph 6 of the Statement of Claim, and denies that it or any of its servants or agents were negligent as particularly alleged therein or in any manner in respect of this action, and without limiting the generality of the foregoing, the Defendant denies that the motorman of the streetcar was not keeping a proper lookout and that the streetcar was operated at an excessive or improper rate of speed and that the brakes of the streetcar were defective in any manner and that the Plaintiff's automobile had any right-of-way in respect of the streetcar and that the mechanism of the streetcar was faulty or improper in any manner and was operated improperly in any respect.
- 30 4. If the Plaintiff suffered injury or damage, which is denied, such injury and damage was caused solely, or alternatively contributed to by the negligence of the Plaintiff, who was negligent in that :-
 - (a) He attempted to turn from one side of the street to the other, at a place other than at an intersection or street end, without observing that such a manoeuvre could not be made in safety, thereby violating Section 41 of the City of Vancouver Street and Traffic By-law No. 2849.
- 40

In the Supreme
Court of
British Columbia

No. 3

Statement of
Defence,
1st November
1949 -
continued.

(b) He obstructed the use of the railway track by the streetcar and failed to yield the right-of-way to the streetcar as required by Section 33 (1) of the City of Vancouver Street and Traffic By-law No. 2849, and by Section 38 of the Consolidated Railway Company's Act, 1896, Statutes of British Columbia 1896, Chapter 55.

(c) (i) He suddenly turned his automobile from one traffic lane to another immediately in front of a moving streetcar without observing that such a manoeuvre could not be made in safety. 10

(ii) He suddenly stopped his automobile immediately in front of a moving streetcar without observing that such a manoeuvre could not be made in safety.

(iii) He failed to give a proper or any signal of his intention to turn or stop his automobile. 20

All contrary to Section 3(j) of the Regulations Pursuant to the Motor Vehicle Act, R.S.B.C. 1948, Chapter 227.

(d) He failed to keep a proper or any lookout.

(e) He failed to keep his automobile under proper or any control.

(f) He failed to heed the warning gong of the streetcar.

Signed A. Bruce Robertson

Solicitor for Defendant. 30

DELIVERED this 1st day of November, A.D. 1949, by A. Bruce Robertson, whose place of business and address for service is in Room 320, 425, Carrall Street, Vancouver, B.C.

To the Plaintiff

And to: Harry C.F. Spring Esq.,
201 Bentall Building,
999 West Pender Street,
Vancouver, B.C.
Plaintiff's Solicitor. 40

No. 4.

In the Supreme
Court of
British Columbia

STATEMENT OF REPLY

No. 4

Statement of
Reply.

10th November
1949.

The Plaintiff as to the Defence says that:-

(1) He joins issue.

10 (2) If the Plaintiff was guilty of negligence which caused or contributed to the injuries and damage suffered by the Plaintiff, which is not admitted but specifically denied, the Defendant was guilty of ultimate negligence by reason of the fact that the Defendant had the last chance to avoid the accident.

DATED at the City of Vancouver, Province of British Columbia, this 10th day of November, A.D. 1949.

Signed Harry C.F. Spring
Solicitor for the Plaintiff

TO: The Defendant.

AND TO: Its Solicitor
A. Bruce Robertson.

20

No. 5.

Plaintiff's
evidence.

OPENING REMARKS OF COUNSEL.

No. 5

Opening remarks
of Counsel.

H.C.F. SPRING, Esq., appearing for the Plaintiff,
HON. J.W. DeB. FARRIS, Esq. K.C., and
WM. Q. CAMERON, Esq., appearing for the Defendant.

Mr. Spring: I appear for the plaintiff, my lord.

Mr. Farris: I appear with Mr. Cameron for the Defendant, B.C. Electric Railway Company.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 5

Opening remarks
of Counsel -
continued.

The Court: Members of the jury, answer your name when called and step forward please.

(JURY CALLED AND SWORN)

(T. LENSON, FOREMAN)

The Court: The rest of the jury, I suppose, can be excused.

The Sheriff: The rest of the jury will please report to the Sheriff's office now.

Mr. Spring: My lord, before proceeding there was a notice to amend the Statement of Claim filed on April 24th, which my learned friend agreed at that time would not be opposed. So, I ask to amend the Statement of Claim by adding the following sub-paragraph to paragraph 6:

10

"(j) In failing to train the motorman of the street car involved in the accident either adequately, carefully, properly or at all before entrusting the operation of the said Streetcar to him.

20

(k) In entrusting the operation of the said streetcar to a servant, agent, employee or workman who had not been trained, either adequately, carefully, properly or at all in the operation of a streetcar of the type involved in the said accident."

30

I would like to ask for that amendment to the Statement of Claim at this time.

The Court: Any objection?

Mr. Cameron: No, my lord.

The Court: Very well.

Mr. Spring: My lord, and Mr. Foreman and gentlemen of the Jury, this is an action for damages, brought by my client, Mr. Marvin Sigurdson, who is sitting over here, against the B.C. Electric Railway Company, to recover damages for injuries he suffered in an accident which occurred on August 6th, 1948, a little over two years ago.

40

On this occasion, Mr. Sigurdson appears to have been driving his automobile east on Broadway, in the vicinity of Heather Street, where Heather intersects Broadway. He crossed Heather Street and then was making a left turn, after he crossed Heather Street by approximately seventy-five feet, to go into a garage to get gasoline. At this time he stopped - he turned on to the streetcar tracks and stopped, apparently because there was west-bound traffic coming on the other side of the street on which he could not get for the moment, and while he was stopped a streetcar, which was proceeding in the same direction as he was, proceeding east and coming up from behind him, continued on its course and collided with his car.

10

Now you will be provided with maps, so that you can look at the plan of the street and see how it is tied in.

20

Now when this collision occurred, Mr. Sigurdson's left arm and hand were badly crushed, presumably between the streetcar and his automobile, with the result that he was off work for eleven months and has only been able to get unskilled labour since that time. Prior to that time he was a tradesman, a millwright, the man who looked after the proper running of mill machinery. It is a skilled trade, as you know.

30

Now the left hand is permanently impaired, and he will be unable to continue with his trade and because of this he has suffered, of course, a great loss of prospective income, and we are going to ask you to award him substantial damages. We maintain that the cause of the accident was caused entirely by the negligence of the B. C. Electric Railway, and the negligence of the B. C. Electric Railway Company motorman, who was driving the streetcar. We say that the motorman was negligent in not stopping the streetcar, when he had ample time to see the car across the tracks. We say, alternatively, that if he did attempt to stop the streetcar the brakes must have failed, therefore the company is negligent in having equipment travelling on a public street that is not in a proper condition.

40

We also further say that the motorman had not been properly trained by the company and should not be entrusted to the operation of a streetcar at that time.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 5

Opening remarks
of Counsel -
continued.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 5

Opening remarks
of Counsel -
continued.

Now, my lord, I think at this time I should put in a plan of the street, which has been approved by my learned friend and give the jury copies of the plan to which they may refer. I could put the plan in as Exhibit 1.

(PLAN MARKED EXHIBIT NO.1.)

Mr. Spring: Gentlemen, I will give you a plan here. Now, this, gentlemen, is a plan of Broadway, in the vicinity of where the accident occurred.

10

The Court: Mr. Spring, the reporter is going to have difficulty if you stay where you are. If you stood over at that far corner of the jury box, then I think the reporter could hear you.

Mr. Farris: We better give the jury another copy of the plan.

Mr. Spring: Now, on this plan you will see that shows the intersection of Broadway and Heather Streets. The plan is drawn on a scale of 20 feet to 1 inch. That is, every inch on the plan represents 20 feet on the street. I am referring to the main plan.

20

In the bottom left hand corner there is a small insert that shows to a greater extent Broadway, and it shows Broadway and Heather and one intersection to the east and one to the west, and that insert is on the scale 100 feet to the inch.

But dealing with the main part of the plan, there is one amendment to be made on the plan. You will notice first that the top of the plan is north, the bottom of the plan is south, the left is west and the right is east. Now, at the north-east corner you will see a safety zone marked in there, against the streetcar tracks. Now, that safety zone, my learned friend and I have agreed, was not there at the time of the accident, that it was put in at a later date. You will also see that on the northeast corner there are stores marked there and next to the stores you will see "Texaco Garage Service".

30

40

You will hear from the evidence that it was that garage into which the plaintiff was intending to go to obtain gasoline when the accident occurred.

10 Again on the plan I will remind you he was coming from the west, that is the left of the plan, proceeding east, that is to the right hand of the plan. He crossed Heather Street and turned left to proceed into the Texaco gas station and he stopped on the streetcar track, that is, the streetcar track for the eastbound street car traffic, that would be the lower one of the two on the plan, waiting for traffic which was going westbound on the other side of the street to pass. The streetcar was also coming from the west, that is, from the left, and crossed Heather Street and collided with a car.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 5

Opening remarks
of Counsel -
continued.

I think, with that brief introduction, you will be able to follow the evidence as you hear it.

20 My lord, at this time I think it is agreed with my learned friend that they will admit that the streetcar concerned in the accident is owned and operated by the B.C. Electric Railway Company, and that the motorman who was driving it was their servant and their employee, and that his name is James Vincent Calli.

Mr. Farris: That is agreed.

Mr. Spring: I am calling as a first witness, my lord, John J. Dowling.

I think, my lord, probably the witnesses should be excluded from Court, now that we are starting to take evidence.

30 The Court: Very well.

The Clerk: All witnesses in this case, with the exception of the principals, will retire from the Court room and remain within call, please -- all witnesses on both sides.

Mr. Farris: Do you want the motorman out?

Mr. Spring: I think so, yes.

In the Supreme
Court of
British Columbia

No. 6.

EVIDENCE OF J.J. DOWLING.

Plaintiff's
evidence.

No. 6

J.J. Dowling.
Examination.

JOHN JOSEPH DOWLING, a witness called on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. SPRING:

Q. What is your occupation, Mr. Dowling?

A. Traffic Officer on the Vancouver City Police.

Q. Speak loudly, so the jury can hear you. Would you repeat that, please?

10

A. Traffic officer on the Vancouver City Police.

Q. And were you a traffic officer on August 6th, 1948? A. Yes, I was.

Q. And did you, on that date, attend at the scene of an accident near the intersection of Broadway and Heather Streets, in Vancouver, B.C.?

A. Yes, I did.

Q. What kind of an accident was it?

A. It was an accident involving a streetcar and an automobile.

20

Q. Did you discuss this accident with the streetcar motorman?

A. Yes. I asked the motorman what happened, and, as far as I can recollect, he stated that the --

Mr. Farris: Just a minute, now. I haven't admitted that the man in the excitement after an accident - any statement he makes is evidence against the B.C. Electric.

The Court: Well, you say that it is not.

30

Mr. Farris: Yes, my lord.

The Court: Why not?

Mr. Spring: Well, my lord, of course ----

In the Supreme
Court of
British Columbia

The Court: I will hear what he has to say. I
will hear his evidence.

Q. I want to know whether or not your memory is
such that you can tell us what he says.

Plaintiff's
evidence.

Mr. Spring: Q. Well, Constable, would you tell
us what your recollection is of what the
streetcar motorman told you.

No. 6

The Court: Q. What he said. If you can remember,
what did he say?

J.J. Dowling,
Examination -
continued.

10

A. He stated that the brakes didn't seem to work
right away.

Mr. Spring: Q. Did you have any discussion with
the driver of the automobile? A. Yes, I did.

Q. At the scene of the accident ?

A. No, not at the scene of the accident. He had
already been taken to the hospital.

Q. He was taken away, when you arrived? A. Yes.

Mr. Spring: Your witness.

20

Mr. Farris: No questions.

(Witness aside).

Mr. Spring: I am going to call as the next wit-
ness a Mr. A.J. Read. Mr. Read has somewhat
of an impediment in his speech, and it is go-
ing to be rather difficult for you to under-
stand him, but I think you will be able to
listen very carefully and get it.

The Court: R-e-a-d?

Mr. Spring: R-e-a-d, yes, my lord.

In the Supreme
Court of
British Columbia

No. 7

EVIDENCE OF ALFRED JOHN READ.

Plaintiff's
evidence.

No. 7

A.J. Read
Examination.

DIRECT EXAMINATION BY MR. SPRING:

Q. Mr. Read, will you speak as loudly as possible,
so that the jury can hear your answers.

A. Yes.

Q. Where do you reside? A. 5701 Carleton.

Q. 5701 Carleton Street? A. Yes.

Q. Do you recollect being a passenger on a street
car that was involved in a collision with an
automobile on August 6th, 1948? A. Yes.

10

Q. Where were you riding in this streetcar?

A. In the second seat on the right hand side.

Q. The second seat from the front, or the back?

A. From the front.

Q. Where did you get on the streetcar?

A. At Broadway and Granville.

Q. And on what street was the streetcar proceed-
ing? A. Going towards Main Street.

Q. On what street? A. On Broadway.

20

Q. On Broadway? A. Yes.

Q. About what time did the accident occur?

A. Well, I really couldn't say. Some time late in
the afternoon. Late in the afternoon.

Q. Late in the afternoon. How fast was the street
car travelling, when the accident occurred?

A. Well, he was going pretty fast.

Q. Did the streetcar slow down at all, before the
collision? A. No, I don't think so.

Q. Did you see the automobile at all, before the collision? A. No.

In the Supreme Court of British Columbia

Q. How far did the streetcar go, after the collision had occurred?

Plaintiff's evidence.

A. Oh, about two car lengths, something like that.

Q. Two car lengths? Two streetcar lengths?

No. 7

A. Yes, about that.

A.J. Read, Examination - continued.

Mr. Spring: Your witness.

CROSS-EXAMINATION BY MR. FARRIS:

Cross-examination.

10 Q. Mr. Read, you heard the brakes go on?

A. Well --

Q. You felt them go on, we will put it that way.

A. Well, I don't know. I guess so.

The Court: What is that?

Mr. Farris: He felt the brakes go on. He said "I guess so."

The Witness: Well, the motorman, when he put the brakes on, sounded his gong.

Mr. Farris: Q. Both at the same time? A. Yes.

20 Q. Now, were they both at the same time, the brakes going on and the gong?

The Court: The motorman sounded his gong?

Mr. Farris: And put the brakes on, at the same time.

The Court: Q. Is that correct? A. Yes.

Mr. Farris: Q. Did you see the auto at all?

A. No, I didn't see the auto, until he was underneath the front end of the car.

30 Q. It couldn't have been right in front of the streetcar then? A. It may.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 7

A.J. Read -
Cross-
examination -
continued.

Re-
examination.

Q. Could you see through the front?

A. I think the door was closed. I am not sure.

Q. You couldn't see straight through?

A. No.

Mr. Farris: That is all.

RE-DIRECT EXAMINATION BY MR. SPRING:

Q. I have one question, my lord. How long was it, from the time you felt the brakes applied, until the crash occurred?

A. Well, it would be a matter of maybe seconds, maybe a minute. I wouldn't say for sure.

10

Mr. Spring: That is all.

The Court: I understand his answer was this: Maybe seconds and maybe a minute, between the time the brakes were applied and the accident.

Mr. Spring: That is what I understood his answer was.

(Witness aside).

Mr. Spring: My lord, I want to be excused for a minute, to see if the doctors have arrived. We asked them to be here, soon after a quarter to twelve.

20

I will call Albert Quinn. The doctors are not here.

No. 8.

EVIDENCE OF ALBERT QUINN

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 8

Albert Quinn
Examination.

DIRECT EXAMINATION BY MR. SPRING:

Q. Mr. Quinn, would you speak loudly, so that the jury over here will be able to hear your answers. A. I will try.

Q. Where do you reside?

A. I reside at 442 East 24th.

10 Q. And what is your occupation? A. I am a truck driver.

Q. Do you recollect the date of August 6th, 1948?

A. Yes, I do.

Q. What was your occupation at that time?

A. I was a service station attendant at the Texaco Service Garage.

Q. And where is that service garage?

A. On Broadway, at Heather.

Q. On what side? A. On the east hand side.

Mr. Spring: May I have Exhibit 1, please.

20 The Court: Is this the Texaco Garage?

Mr. Spring: Yes, my lord. I thought I would have him mark an "X" on it.

Q. I am showing you a plan of the intersection of Heather and Broadway. Would you take a pencil here and just mark with an "X" which garage you are speaking about, if you can see it on there.

30 The Court: Do not mark the plan up any more than you have to. There is a garage marked "Texaco Garage Service". Is that what he means?

Mr. Spring: Yes.

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continued.

Q. Is that the garage you refer to "Texaco Garage Service"? A. Yes.

Mr. Spring: That is the garage, gentlemen, that is marked on the map.

Q. Now, did you, on August 6th, 1948, see a collision between a streetcar and an automobile in that vicinity? A. Yes.

Q. And do you know the name of the driver of the automobile? A. Sigurdson.

Q. Is this the man here (indicating)? 10

A. That is the man.

Q. Where were you standing, at the time the accident occurred?

A. I was standing right inside the service garage by the pumps. Not right inside, but by the doorway.

Q. About what time did the accident occur?

A. A little before six o'clock.

Q. At night, or in the morning? A. At night.

Q. Where was Sigurdson's automobile, when you first noticed it? 20

A. I first noticed it coming down Broadway, going East.

Q. Had it crossed the intersection of Heather Street?

A. No, not then it hadn't. Oh, yes, it had crossed the intersection of Heather, when I first seen it.

The Court: Q. What is that?

A. It had crossed the Heather Street intersection, when I first seen it. 30

Mr. Cameron: Now, that is the automobile, is it?

Mr. Spring: Yes.

Q. What did you see the automobile do, after that?

A. Well, I saw it turn on to the streetcar tracks and stop, and wait for the traffic to go by, so he could get through.

Q. Did the driver Sigurdson give any signal for making that turn?

A. Yes. He put his left hand out.

Q. Where was the streetcar, when Sigurdson made this left hand turn across the tracks?

10 A. Well, I hadn't see it then.

Q. You hadn't seen it then?

A. No. I guess it was up the street a little way.

Q. Now, you say that Sigurdson stopped on the streetcar tracks. How long was he stopped on the tracks, before you noticed the streetcar?

A. Well, I would say he stopped about fifteen or twenty seconds. Fifteen seconds, anyway, around there.

Q. Fifteen seconds - I didn't get that.

20 A. Fifteen seconds --

Mr. Farris: Q. What?

A. -- that he was stopped on the streetcar tracks.

The Court: Q. You said fifteen to twenty seconds, at first.

A. Well, in the vicinity of that.

Mr. Spring: Q. When did you first notice the streetcar approaching?

A. Just when it hit the Heather intersection.

Q. Just when it hit the Heather intersection?

30 A. Yes, crossing the road.

Q. Now, about how far did it have to go, from that intersection to the point where Sigurdson's car was stopped, have you any idea?

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continued.

A. It would be about 75 to 100 feet.

Q. Did the streetcar slow down at all, from the time you first saw it, until the time it hit Sigurdson's car?

A. Well, I don't think it did. He was going pretty fast, when he came to the intersection.

Q. How fast would you estimate the streetcar was going?

A. He was going 35 miles an hour. 35 to 40, anyway.

Q. Was Sigurdson's car moving, at the time it was struck by the streetcar?

A. I don't know. I couldn't say for sure, whether it was or not. I was watching the streetcar coming down, to see if he would stop or not.

Q. How far, if at all, did the streetcar drag or take Sigurdson's car after the impact?

A. Oh, I would say around 50 feet.

Q. What did you do, after the accident occurred?

A. Well, I ran straight across the street behind the streetcar and around to the front, and Mr. Sigurdson was just getting out of his car.

The Court: Q. What is that again?

A. I ran across the street, behind the streetcar, around to the front of the streetcar to where the car was that was hit, and Sigurdson was getting out of the car when I grabbed him, and he was holding his hand, and there was an ambulance parked at the coffee shop on the corner and the boys were just coming out of there, and I ran him across to the ambulance, and they took him away.

Q. Where was the ambulance parked did you say?

A. At the coffee shop at the corner.

Mr. Spring: Q. What corner is that?

The Court: Q. The corner of Heather?

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30

A. The corner of Heather and Broadway.

Mr. Spring: There is a coffee shop marked there, my lord.

The Court: Yes, all right.

Mr. Spring: Q. Did you see the streetcar motorman, after the accident occurred?

A. Yes, he was standing in front by the streetcar, by the two cars.

The Court: Q. What is that again?

10 A. The streetcar motorman was standing in front, by the two cars.

Q. I did not get it yet. The motorman was standing - A. In front of the streetcar.

Q. When you got there? A. Yes, when I come back.

Q. When you came back from the ambulance? A. Yes.

Mr. Spring: Q. Did you hear the motorman make any statements about the accident?

A. Yes. I heard him say that the brakes wouldn't hold on it.

20 Q. To whom did he make this statement?

A. Well, there was a policeman there at the time, and there were about four or five other fellows. I don't know whether he was talking to anybody, but I just heard him say it.

The Court: Q. The policeman was there and yourself?

30 A. There was one policeman there at the time, and when he said that the brakes wouldn't hold, I don't know whether he was talking to the policeman or to any of the other fellows that were around there.

Mr. Spring: Q. Did you think when Sigurdson first stopped on the streetcar --

Mr. Farris: Oh, well, what he thought is not evidence.

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continued.

The Court: Oh, no, that is not evidence, what he thought.

Mr. Spring: Well, my lord, I think I can put the question this way:

Q. Did you consider that Sigurdson's car was in danger, when he stopped on the streetcar tracks first,

The Court: No. Surely that is for the jury to decide. Leave the jury, you know, something. That is what they are here for.

10

Mr. Spring: Q. I want you to mark on this map the position of Sigurdson's car, that is, Sigurdson's automobile, when he first stopped on the streetcar tracks. You can turn the map round, if you like. You better put a figure one in there, will you?

A. (Witness complies).

Q. Now will you mark where the streetcar was, approximately, when you first noticed it approaching, A. Well, it was ---

20

Q. Mark that with a 2.

A. There is a cut-out in the garage. You can see at an angle, that is not on the map.

Q. Will you mark now where the streetcar was, when it finally stopped after the accident.

A. It was about here (indicating).

Q. Mark that 3.

A. (Witness complies).

Q. Now, will you mark where the automobile was, after the accident?

30

A. It was about here (indicating).

Q. Mark that 4.

A. (Witness complies).

Mr. Spring: Gentlemen of the jury, I would like you to have a look at that. The witness has marked as Position 1 the position where the automobile first stopped on the tracks, and as Position 2 the place where he first noticed the streetcar approaching. He has marked as Positions 3 and 4 the final position of the streetcar and the automobile respectively after the accident.

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10 Q. Now, how long after the accident had occurred was it, before the police arrived?

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continued.

A. Oh, I would say almost immediately. There was one policeman there right after I come back, and then there was about four or five come after and they directed the traffic along the road.

Q. Had Sigurdson been to this service station where you worked, on previous occasions?

A. Yes. He has been in for gasoline.

20 CROSS-EXAMINATION BY MR. FARRIS:

Cross-
examination.

Q. Mr. Quinn, you remember somebody from the B.C. Electric calling you up on the phone and asking you about this case?

A. Yes, they asked me about it.

Q. My note shows that was in July of 1949. A. Yes.

Q. And you had quite a talk with him?

A. Not quite a talk.

Q. Oh? A. How do you mean? In what way?

Q. Well, I mean, he asked you all about it.

30 A. Yes.

Q. And you told him that you had been standing in the doorway, at the time of the accident?

A. Yes.

Q. You described where your building was. Did you tell him that you noticed the claimant's auto

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continued.

travelling east on Broadway? I suggest you did, and the auto slowed down and started to turn on to the rails? That is true? That is what happened, isn't it? A. Yes.

Q. The driver had his hand out and just as he started to turn he stopped with the left hand corner of his auto afoul of the rails, to wait for the westbound traffic to clear.

A. I figure he stopped on the track.

Q. You remember this being said; the driver put his hand out. A. Yes. 10

Q. Just as he started to turn, he stopped with the left front corner of his car afoul of the rails, to wait for the westbound auto traffic to clear.

A. Well, he was on the east tracks, going east.

Q. Yes, that is right.

Mr. Spring: I think that is westbound, is it not.

Mr. Farris: Did I say westbound?

The Court: Westbound is right. 20

Mr. Farris: The note I have is "Didn't see the east-bound streetcar." The streetcar was going east --

Q. Oh no, I beg your pardon. The driver had his hand out, and just as he started to turn he stopped, with the left hand corner of his auto afoul of the rails, to wait for the westbound traffic to clear. A. That is right.

Q. So, you saw him as he was coming down the street, and you saw him as he stopped. A. Yes. 30

Q. And from the time he stopped, he didn't move again until he was hit? A. I don't think so.

Q. And he was only hit a glancing blow, on the front of his motor car?

A. Yes. Right around the front door, I think.

Q. And that flipped the rear part of the car in against the streetcar?

A. Well, I guess it did, I don't know.

Q. Well, take the plan here. The car has its nose on the rails. A. Yes.

Q. And as the streetcar hits it, it swings the car in against the side of the streetcar. That was when Sigurdson got his hand hurt?

A. Yes --

Q. You were going to say something else?

10 A. It wasn't right up against the streetcar, when they ended up. There was a little space in between.

Q. What happened when they ended up isn't so important. What is important is what happened when it hit. Now, as I read this memo which is here, you were able to see the street car from where you were standing, when you first saw the motorcar? A. No.

Q. Just describe to the jury why that was.

20 A. Well, there is -- on the garage there is a cut-away. You know, it is at an angle, like that (indicating) You can see up to Heather and down to about half a block the other way. Well, the streetcar wasn't in the vicinity of that.

Q. No. Well, then, did you walk out further?

A. No. From where I was standing, you can see Broadway.

Q. You stood there. What you told this fellow that phoned you was that the streetcar seemed to be going at a fair clip?

30 A. Well, it was going at a fast clip.

Q. A fair clip, and did you tell him that the car, that is, the streetcar must have been two or three car lengths away when the auto first stopped? A. No, I don't think so.

Q. Eh? A. I never told him that, because, I never seen the streetcar, and it is over two or three lengths to the corner.

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continued.

Q. How would he get this down, witness --

Mr. Spring: This witness doesn't know how somebody got it down.

Mr. Farris: Q. I wondered how he got it, witness, unless you did state that the car must have been two or three car lengths away when the car -- the auto first stopped. Now, it is a fact, isn't it, that is about right?

A. No, from the car to the corner is over three streetcars from where I could see.

10

Q. Mr. Sigurdson himself tells us he didn't make ---

Mr. Spring: Well, now --

Mr. Farris: That is in the Discovery.

Mr. Spring: It isn't in yet.

Mr. Farris: Q. Let us assume, until I put it in, that he didn't make a short turn, he made a gradual turn. I suppose you would agree with that? He didn't come down and turn and attempt to go straight across?

20

A. No, I don't think so.

Q. As a matter of fact, he never got straight across at all? If he had, he would have been killed.

A. Yes, he might have been.

Q. If he had been hit across the track, when that streetcar hit him, he wouldn't have had a chance?

A. He mightn't have.

Q. He was really on the side of the track, with the nose of his car edging in?

A. He was on an angle.

30

Q. He was on an angle, on edge of the track. Now, have a look at where he marks it. I think you have the plan, my lord.

The Court: Q. Now, you say at an angle, at the edge of the track. There are four tracks there.

A. Yes.

Q. He was on the first one?

A. He was on the first one.

Q. That is the one to the south? A. Yes.

Mr. Farris: Q. The first rail, you are talking about? A. Yes.

Q. Just hold that plan, will you, witness? Put the Bible on it, and we will be sure to get the truth. Now, I suppose this southerly driveway is the one he would go in (indicating)?

10 A. Yes. He was turning in this one (indicating), I think.

Q. That is the southerly one, closest to Heather?

Mr. Spring: That is westerly.

Mr. Farris: Q. I am sorry, that would be the nearest to Heather. What do these figures mean?

A. This is Sigurdson's car, and this is the street car (indicating).

Q. At what stage?

20 A. Well, I forget which stage he asked me about now.

Q. You ought to know. A. When I first seen it.

Q. Hold on. He wasn't going away past the driveway. A. No, he was even with the driveway.

Q. No, he isn't even with the driveway. Here is your driveway (indicating)

A. This is a driveway (indicating).

Q. This is a driveway?

30 A. This is a driveway, and these are the gas pumps (indicating).

Q. The gas pumps in the centre?

A. This is all one big driveway (indicating).

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examination -
continued.

Q. You have it pretty well to the lower part of the driveway. Where were you standing?

A. I was standing right here (indicating).

Q. Let us mark it, now. Your name is Quinn. Put a "Q" there. You put it there.

A. Okay. (Witness complies).

Q. That is where you were. So, had he started to make his turn at all when you first saw him?

A. Well, I don't remember, but he was coming along Broadway here (indicating) and I seen him about like back here (indicating). 10

Q. When you are pointing to "here", you are pointing to the paved part of Broadway, eh?

A. Going east.

Q. Yes, south of the car tracks. A. Yes.

Q. South of the car tracks, and if he stayed on that south side until the streetcar got by, he wouldn't have been in trouble at all?

Mr. Spring: Well, I object to that. Don't answer that question, until his lordship rules on it. That is his opinion, and that is for the jury to decide, as his lordship said. 20

The Court: Well, anybody knows that.

Mr. Farris: The driver, apparently, didn't.

The Court: If he had not been on the track, he would not have been hit.

Mr. Farris: Q. There was ample room for him to stop in safety on the south side of the track, if he had stopped where -- in line with where he had been driving, and waited for the street car to pass. There was ample room, wasn't there? 30

A. Well, I could say it is against the law, to stop in the middle of the road.

Q. Let me look after the law, with his lordship's permission, later on. Forget what the law is,

it is facts I want.

I say it is quite clear, as this motor car came down Broadway going east across Heather, that if he had stayed in the line of direction he was going and stopped and waited for the streetcar to go by, he would have been in perfect safety? A. Yes.

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continued.

10

Q. And the old saying is still true, there is always more room behind a streetcar than there is in front of it, isn't there? You would agree with that? Well, I don't know why you should hesitate, that is pretty obvious.

A. Were you asking me?

Q. I say, there was more room behind that streetcar than there was in front of it?

A. Yes, in a way there is.

Q. Now, the Sigurdson car, you were watching it all the time and it never backed up, did it?

A. Not that I noticed. I never noticed it back up.

20

Q. You did notice his hand out, did you? A. Yes.

Q. And he never got on the devil strip, did he?

A. In between the tracks?

Q. Yes. A. I couldn't say.

Q. I thought you were looking at him?

A. Yes, he was on the first tracks.

Q. But you were looking at him? Was he ever on the devil strip? A. That I don't know.

Q. You would have seen it, if he was, wouldn't you?

A. Well, I know he was across on the track.

30

Q. I know you told us that. We have that fixed, but the front wheel of his car was just on this one track. Now, I am asking you if, in those circumstances, and you were there all the time, if he ever got on the devil strip, and I want an answer.

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continued.

Mr. Spring: The witness has already answered you.

A. Well, I told you he was on the tracks.

Mr. Farris: Q. Yes.

A. As far as the devil strip is concerned, I don't know whether he was on there or not.

Q. Why don't you know? Couldn't you see?

A. Yes, I could see.

Q. You could see? A. Sure.

Q. When you saw him, was he on the devil strip?

A. Do you want an answer yes or no?

10

Q. Yes.

Mr. Spring: Now, my lord, I object to that.

The Court: That is a proper question.

Mr. Spring: He has told the witness he wants an answer yes or no.

Mr. Farris: The witness asked it.

Mr. Spring: The witness already stated he couldn't say whether he was on the devil strip or not.

The Court: He can answer any way he pleases. He was either on the devil strip, or not, one way or another. If he does not know, he can say he does not know.

20

The Witness: He was on the tracks, so I will have to say no.

Mr. Farris: All right, that is very fair.

The Court: That is, up to the time he was hit by the streetcar. What happened after that, you do not know.

A Juror: What do you mean by the devil strip?

Mr. Farris: We get so used to that expression here we take it for granted everyone knows it. The

30

devil strip is the space between the two lines there (indicating).

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The Court: You better ask the witness.

The witness: The devil strip is the space of pavement in between the two tracks.

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The Court: Q. That is, between the southernmost tracks going one way and the northernmost tracks going the other way? A. Yes.

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Cross-
examination -
continued.

Q. How wide is it, do you know?

A. The devil strip?

10 Q. Yes. It is not as wide as the space between the tracks, or the wheels of the car?

A. Just about, yes.

Q. Just about the same, is it?

A. Yes. Five or six feet -- five and one-half.

Q. Just a minute. I was asking you about the distance between the tracks -- the sets of tracks. What is the width of the devil strip, in other words? You say about the same as the distance between the tracks. The distance between the tracks is four feet, six and a half inches.

20 Mr. Cameron: It is about five feet across the tracks and fifteen feet from the outside track to the outside track. The inside measurement or the gauge is four feet, eight and a half inches, from inside to inside on one set of tracks.

Mr. Farris: Q. I guess that the devil strip is a shade wider than the streetcar tracks, from looking at the plan.

30 I was going to show the jury where Mr. Quinn says he was standing, if your lordship is finished with that.

The Court: Yes.

Mr. Farris: This is "Q" for Quinn. We can put it on your copies of the plan, if you like. He says all that space that looks like brick (indicating) -- I thought it was bricked up, but

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continued.

he says it is a driveway, and the white rectangle in the centre is where the gas pumps are and mark No. 1 is pretty nearly opposite that white spot in the middle, the "1" being where he thought the car was struck.

Q. I want to ask you, Mr. Quinn; I suppose this black line west of the driveway is the wall of your building, is it? A. Yes.

Q. So, that wall is built right up? A. Yes.

Q. So, from where you were standing you can't see through that wall? 10

A. Yes, I can, because on the map there is not a cut-away, but on the garage there is. Like I said before, there is a cut-away. It is at an angle, so the cars can come in at an angle.

Q. The wall isn't cut away?

A. Well, it comes out to about here (indicating) and then it goes out this way, and the same with this end (indicating).

Q. Well, you better draw that. I will give you a pen, here is your driveway (indicating) Now, this is your wall line, isn't it, (indicating)? 20

A. Yes.

Q. Nothing over here (indicating) belongs to Texaco? A. No.

Q. Then you draw the line.

A. It comes down to about here and then angles up (indicating). Right from here it angles up (indicating).

Q. Not into the other store? 30

A. No. All right, it is over here then (indicating). I guess I made this wrong. But say down here, and it angles off like that (indicating).

Q. Does it cut into the grass and the bench here (indicating)?

A. No, but it goes up to here (indicating), I am sorry.

Q. That is a cut-away?

A. That is a cut-away in the garage, up to there, (indicating), where it comes out.

Q. But the wall continues right out? You don't drive over the green grass, do you? A. No.

Q. All right. Well, I guess we will strike that out (indicating), that part. A. Yes.

10 Q. I have made some cross-lines there. So it doesn't go on the "grass" "bench"? All right, thank you.

I will show you that in detail later on, maybe, when we are talking about it, gentlemen.

From the time you saw the streetcar, until it hit, it couldn't have taken very long?

A. No, about 100 feet.

The Court: Q. What was 100 feet?

A. From the time I seen the streetcar, until it hit the car.

Mr. Farris: Q. You hadn't moved your position, eh?

20 A. No, I was still standing there.

Q. Where was the streetcar. in relation to Heather Street, when you first saw it?

A. About the intersection.

Q. About the intersection?

The Court: It had crossed the intersection, had it, when you saw it?

A. Yes. It was just crossing the intersection.

Q. It was just crossing the intersection, when you first saw it?

30 Mr. Farris: Q. Would you say it hadn't crossed it? Would you pledge your oath to that, it hadn't crossed it, when you first saw it, bearing in mind where you were standing?

A. That it hadn't crossed --?

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examination -
continued.

Q. The intersection. I suggest to you that the streetcar, when you first saw it, had crossed the intersection.

A. Well, I am pretty sure it hadn't.

Q. But you are not positive?

A. Yes, I think I am positive.

Q. How far into the intersection was it?

A. Well, I would say about the middle of the intersection.

Q. About the middle of the intersection. All right. That is all thank you. 10

Re-examination. RE-DIRECT EXAMINATION BY MR. SPRING:

Q. One question, Mr. Quinn. On this map, this cut-away that you have been talking about, you see this concrete here (indicating)? A. Yes.

Q. That is the sidewalk, is it? A. Yes.

Q. Is this cut-away you talk about in the driveway, or in the wall of the garage?

A. Well, it goes up to the end of the store here (indicating), but the way it is here, it should be back. You see, here are your pumps (indicating). 20

Q. Are you sure you have located the proper place for the pumps?

A. The pumps are right in the centre of the driveway. There is the driveway on each side, and there is two pumps there (indicating).

Q. But they are not across the sidewalk, are they?

A. No.

Q. Well, take a look at that. Isn't this the sidewalk, running through here (indicating)? 30

A. Yes.

Q. Isn't it likely, then, that the pumps are further back?

A. Oh, yes, it is likely. The pumps must be further back.

Q. In other words, the pumps are not in this clear rectangle?

A. No, they are back further. This is a long driveway here, and the pumps are back here (indicating).

Q. This cut-away you refer to as coming across here (indicating) is on the pavement? A. Yes.

10 Q. In other words, the wall of the garage doesn't extend across the sidewalk?

A. Oh no. I fixed that.

Mr. Farris: I have a couple of questions.

RE-CROSS-EXAMINATION BY MR. FARRIS:

Q. I have a sketch here, Mr. Quinn, which attempts to show the cut-away and the pumps. I don't know who made this, or where I got it from, but it might help --

20 Mr. Spring: I assume this isn't to scale, my lord, but it might help.

Mr. Farris: We will put this in as Exhibit 2. This shows the pumps and these triangles to either side of the pumps would be the cut-away that you are talking about.

Q. Is that correct? A. Yes.

30 Q. Now, with that in front of you, perhaps you could mark on this map about where you were standing. Put another "Q" in relation to the two pumps. Now, you try and figure out where you were standing.

A. I am trying to figure out the sketch, right now.

Q. Here is the sidewalk (indicating) A. Yes.

Q. This is the driveway in there (indicating).

A. Yes. This is all driveway (indicating).

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Q. And then the two pumps. A. Yes.

Q. And here are your slices off that, showing the angles of your driveway (indicating). Does that look right?

A. Yes. Well, the back of the pumps here (indicating) are right up against the door. Here is the way I was standing. Well, the pumps are pretty near to the door, and the door is right across here (indicating).

Q. Well, put a dotted line there (indicating). The dotted line, a red line, is approximately where the door is?

10

A. Yes. I can put "door" there.

Q. Well, we don't need that.

A. And I was standing about by the pumps, in front of the door.

Q. Put a "Q" there. Is that right?

Mr. Spring: Q. Put it where you were standing.

Mr. Farris: Q. Right in the centre of the "Q" is where you were standing? A. Yes.

20

(SKETCH MARKED EXHIBIT NO. 2.)

Mr. Farris: I don't know that there is any point in labouring it, gentlemen, but this shows the pump in the centre, and this is where these things are. The wall comes in there (indicating) and the "Q" is right here (indicating).

All right, that is all, thanks.

(Witness aside.)

Mr. Spring: I will call Dr. Ganshorn, my lord.

No. 9.

EVIDENCE OF JOHN ALEXANDER GANSHORN

In the Supreme Court of British Columbia

Plaintiff's evidence.

No. 9

J.A. Ganshorn. Examination.

DIRECT EXAMINATION BY MR. SPRING:

Q. Doctor, you are a duly qualified physician and surgeon? A. Yes, sir.

Q. And you are practising here in Vancouver?

A. Yes.

Q. What are your qualifications?

A. I am a certified specialist in general surgery.

10 Q. Do you know the Plaintiff, Marvin Sigurdson?

A. Yes, I do.

Q. You recognise him? A. Yes, I do.

Q. I believe you were called in to attend him for injuries he suffered in an accident on August 6th, 1948? A. Yes.

Q. By whom were you called in?

A. By Dr. C.W. Hunter.

20 Q. Would you tell the Court and jury here what injuries you found Sigurdson had, and give a history of the treatment that was necessary for what you did.

A. Yes. I believe I saw him about four hours after the accident.

MR. SPRING: My lord, I think that the doctor may refer to his notes; may he not?

MR. FARRIS: I have no objection.

MR. SPRING: Q. You may refer to your notes.

30 A. Perhaps I may not need to, unless you want more detail. The man obviously needed repair, that is something done in the operating room, so

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 9

J.A. Ganshorn,
Examination -
continued.

the injuries were fully explored, which took about an hour.

The man had a severe crushing injury to his left hand, and a fracture in the upper arm on the left side. That was not so serious, it was a plain fracture, without displacement. On operation it was evident he had, as I called it, a crushing injury, one resembling, almost, as if something had been driven through his hand, but it evidently was not driven, but crushed, he had a flat burn on part of his hand, in this part of his hand (indicating) and underneath the tendon of the middle finger was completely severed. The three bones of this portion of his hand (indicating) were fractured, but the worst part, or the more harmful part of the injury was the injury to the soft tissues. When he turned his hand over, he had a large ragged cut or split here (indicating) and another one between the thumb and the index finger. Looking deeper into the wound, the muscles of the thumb, which control the action of the thumb, were deeply crushed and actually had been squeezed out, so that they had to be removed. They were of no use. The injury was through the whole depth of his hand, and the muscles between these bones here (indicating) which control this motion (indicating) were crushed and were partly removed. Some of the stronger tissues here (indicating), not the tendons --

10

20

30

THE COURT: Q. When you say "here", that is what?

A. On the thumb of the hand -- were completely severed, and I took a portion of them out, because they obviously would have died.

As I say, the severe part of this injury was the injury to the muscles of the tendon. The bones were also important, but not so important. I put them in place with steel wire, driven into the shafts of each bone to keep them in place, which did nicely.

40

MR. FARRIS: Q. That is the right hand there? You are indicating the right hand?

A. I am sorry. First I put it in a cast and I thought it most fortunate that we got very little infection after, because if you get infection it doesn't heal as well. It healed

nicely, but the injury was so severe that the healing took a long time.

His bones were perhaps not completely healed -- the injury was in August -- until February or March, and during that time he was in the hospital, I believe, three weeks. I see he was in the office on September 4th. That is all but two days of a month later, so he was out of hospital on September 4th. He had to have his arm in a cast, or in some appliance that kept it partly immobilized until the 15th of April.

10

He has had, and he has now, a very deformed hand. Because of the injury to these muscles, his thumb is pretty well fixed to his hand, so that he cannot get it away. The knuckle joints are pretty well fixed in that position (indicating), but he has some movement of the further joints, the joints further out on his fingers; so that he has a claw hand. He can get his thumb down to about there (indicating) but he cannot get it away from his hand.

20

I asked Dr. Serjeant to see him, because I thought we might be able to improve the movement. I asked Dr. Sergeant to see him about December 20th.

MR. SPRING: Q. What year would that be: A. 1949.

Q. The following year?

A. No. December 20th, 1948, I am sorry, and because there was still some thickening and the joints were not completely united, Dr. Serjeant didn't wish to do anything to try to improve the movement for some time. So, he was kept in a cast and some physiotherapy was attempted to maintain the movement of the fingers until May, when Dr. Serjeant operated on him, to attempt to increase the movement of his hand.

30

I believe that was pretty well a failure and I saw him last -- I saw him after Dr. Serjeant was pretty well finished with his treatment, and the hand seemed about the same to me, and I have considered that his left hand has lost 75% of its usefulness. I think that is all.

40

Q. Would you say that he would be able at any time to use that hand for work such as a machinist or a millwright would be called upon to do?

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 9

J.A. Ganshorn,
Examination -
continued.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 9

J.A. Ganshorn,
Examination -
continued.

A. I don't know as I know all that that implies, but he has trouble, both using small things and large things.

Now, small things, like a knife and fork, perhaps he can't handle too well with his hand, because of the weakness and the limit with which he can move his fingers. He has a claw hand, that is pretty well fixed. He can't grasp a large tool, such as a hammer, because he can't get his thumb away from the first finger, to get a grasp on it. I would say he was limited a great deal. He cannot use things in his hand.

10

Q. Would you say there is likely to be any improvement at all in that hand.

A. I think not now.

MR. SPRING: I would like Mr. Sigurdson to show the jury his left hand, unless there is anything that you might wish to ask the doctor.

Q. Dr. Ganshorn, I have here a bill (producing). Is this your bill to Mr. Sigurdson, for services rendered? A. Yes.

20

MR. SPRING: This bill, my lord and gentlemen of the jury, is for \$350.00, services from August 6th, 1948 until completion, which is marked April 5th.

THE COURT: Put it in as an exhibit.

(ACCOUNT MARKED EXHIBIT NO. 3).

Q. Have you been paid, doctor?

A. No, I haven't.

30

MR. SPRING: That is all.

MR. FARRIS: No questions.

(Witness aside).

MR. SPRING: I will call Dr. Sarjeant.

THE COURT: Dr. Sarjeant?

MR. SPRING: Yes, my lord.

No. 10.

EVIDENCE OF THOMAS RALPH SARJEANT

In the Supreme
Court of
British ColumbiaPlaintiff's
evidence.

No. 10

T.R. Sarjeant.
Examination.

DIRECT EXAMINATION BY MR. SPRING:

Q. Doctor, you are a duly qualified physician and surgeon, practising in the City of Vancouver?

A. Yes, I am.

Q. What are your qualifications?

10 A. I am a surgical specialist. I carry on a consulting practice and am a Fellow of the Royal College of Surgeons of England and Canada.

Q. Do you know the Plaintiff in this case, Marvin Sigurdson? A. Yes, I do.

Q. You recognise him? A. Yes.

Q. I believe you were called in to attend him for injuries he suffered, is that correct?

A. Yes.

20 Q. Would you tell the Court and jury what treatment, or, first, what injuries you found and what treatment you prescribed, and give a history of the case.

A. Dr. Ganshorn asked me to see this man in December. His accident was in August.

Q. December, 1948?

30 A. December, 1948. At that time his hand was badly crippled, greatly swollen, and he was unable to use it for almost anything. He could not even help himself to dress with his hand, at that time. Even at that date, the bones hadn't thoroughly united, and though union was progressing in the fractured bones of his hand, still it wasn't complete and that accounted for a great deal of the swelling in his hand.

The tendons had been so badly crushed and bruised by the injury that they were -- that there were adhesions which developed around these tendons, therefore his fingers couldn't work and he couldn't bend his fingers.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 10

T.R. Sarjeant,
Examination -
contd.

It was decided that he should have a cast put back on his hand to keep the bones quiet so that union could proceed, and when the bones were thoroughly united we might be able to do something about getting the tendons of the fingers working again. That was done, and finally, in May, we decided we should operate on the hand, because then the swelling had gone and we might be able to do something for it.

10

Q. That was in May of 1949?

A. That was in May of 1949. We did operate on the tendons on the back of his hand so that the fingers could be bent down. There is no use having some sort of a mechanism on a door to open and close the door unless the hinges will work. We first had to get the joints to work. The tendons were badly damaged, but we found on operating that the main knuckle joints were so badly injured that they could not be made to bend. An attempt was made to get one to bend, but the benefit of that operation lasted only a couple of weeks and the joint had then again become stiff. The only thing that was accomplished in that operation was that the fingers were able to bend a little more in that particular joint, but not at the junction between the fingers and the thumb.

20

The result of that was, of course, that the man could only do this (indicating) and his thumb was stuck -- not stuck closely, but it was held rather closely to his finger, because of the injury to the muscles of the thumb, and he was therefore unable to either open his thumb enough to grasp a large hammer, say the size of that (indicating), since he could not bend his fingers and he could not get a firm grasp on things.

30

He gradually got it working so that he could dress himself, but he could not hold a knife and fork properly, because he could not get enough of a grip between the thumb and fingers, and after the hand had thoroughly and completely recovered from that operation, it was obvious that there was no use trying to do anything more for that hand, and he should just continue to work at it himself and try to loosen up some of the joints, and no further surgery

40

could be done, and we had little hope for much, if any, improvement in that hand.

MR. SPRING: Q. What would you say was the percentage of disability in that left hand of Sigurdson's?

A. The disability percentage is a rather difficult thing to give, of course, and you have to consider when there are two or possibly three angles first of all what was the man's occupation before his accident. He was a millwright, and I would say, from the point of view of working as a millwright, he is a 100% disability, or he has a 100% disability in that hand.

From the point of view of his getting another job, one might say that the disability was, say, 75%, I suppose. There would be few jobs that this man could get, because he was used to working with his hands and, therefore, he must find some kind of job in which he would not be using his hands. Then, thirdly, of course the hand is better than a hook. He can use it to help himself dress and to help feed himself with. Therefore, it is of considerably more use than a hook, in that respect.

The percentage, from the point of view of the use of the hand in ordinary living might be -- well I would put it again at 75%.

Q. Now, there is one other question, doctor -- I might have covered this -- do you think there is any possibility of any kind of the hand improving in any way, in its present condition?

THE COURT: He said there is little hope for any improvement.

MR. SPRING: Yes, very well, my lord

Q. Now, doctor, I show you here a bill. Is this your bill to Mr. Sigurdson for services rendered? A. Yes, that is right.

MR. SPRING: I put this in as Exhibit 4, my lord, a bill for \$250.00.

(ACCOUNT MARKED EXHIBIT NO.4)

MR. SPRING: Your witness.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 10

T.R. Sarjeant,
Examination -
contd.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 10

T.R. Sarjeant,
Cross-
examination.

CROSS-EXAMINATION BY MR. FARRIS:

Q. I take it he could drive a motorcar all right, doctor?

A. He wouldn't be a very safe driver, because, he hasn't much grip. He can certainly get his fingers around the wheel of a car, but while shifting gears he would not have a very good grip on the car.

Q. His right hand is all right?

A. His right hand is all right.

10

Q. For steering, he would be able to steer a car all right?

A. With both hands, yes. I mean, while he had his right hand on the gears, he has to steer with his left hand.

Q. The modern cars have the gears on the steering column and there is not much trouble to handle them.

A. You have to drop one hand off the wheel to change gears.

20

Q. You do with old fashioned cars.

A. Maybe mine is old fashioned.

Q. So is mine. That is the only kind I ever drove. Of course, as far as the man doing clerical work is concerned, I suppose you might say there is no disability?

A. No, he would be able to do clerical work.

THE COURT: Thank you.

(Witness aside).

MR. SPRING: My lord, may the doctors be excused from further attendance?

30

THE COURT: It is agreeable to Mr. Farris, apparently.

MR. SPRING: My lord, I am now going to call Mr. Sigurdson, the plaintiff.

No. 11.

EVIDENCE OF MARVIN OSCAR SIGURDSON.In the Supreme
Court of
British ColumbiaPlaintiff's
evidence.

No. 11

M.O. Sigurdson.
Examination.

DIRECT EXAMINATION BY MR. SPRING:

Q. Mr. Sigurdson, you are the Plaintiff in this
action? A. That is right.

Q. Where do you reside? A. 165 East 41st Avenue.

Q. In Vancouver, B.C.?

A. Vancouver, that is right.

Q. Do you recollect the date of August 6th, 1948?

10 A. Yes.

Q. Were you involved in an accident that day?

A. Yes, I was involved in an accident.

Q. What time of the day was it?

A. Oh, it was about quarter to six in the evening.

Q. Was it daylight or dark on that occasion?

A. It was daylight.

Q. Was the visibility good?

A. Yes, it was very good.

20 Q. What was the condition of the streets? Were
they wet or dry? A. They were dry.Q. What was the nature of the accident in which
you were involved?

A. Well, my car was in collision with a streetcar.

Q. Were you the owner of the automobile in ques-
tion? A. That is right.

Q. What kind of an automobile was it?

A. It was a 1933 Chevrolet.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Examination --
continued.

- Q. A sedan? A. A sedan, yes.
- Q. Now, where did this collision between the streetcar and your automobile occur?
- A. It was on Broadway, just east of the intersection of Heather.
- Q. About how far east of the intersection of Heather? A. Oh, about 75 feet.
- Q. In what direction were you proceeding, just prior to the accident?
- A. I was going east on Broadway. 10
- Q. Was there anyone else in your car with you?
- A. No, sir.
- Q. How far had you been travelling on Broadway, before the accident occurred?
- A. I had been travelling on Broadway, from Granville Street.
- Q. In which direction was the streetcar which collided with you proceeding?
- A. He was going East on Broadway, too.
- Q. When did you first notice this streetcar which collided with you -- the first time you saw it? 20
- A. Well, I was going along Broadway and I had passed the streetcar when he was about to stop at Laurel Street. That was two blocks back further.
- Q. How many blocks from Heather?
- A. That is two blocks.
- Q. Two blocks back from Heather Street? A. Yes.
- Q. After passing the streetcar, what speed did you proceed, along Broadway? 30
- A. Oh, I went about the speed limit, 25 to 30 miles an hour.
- Q. And you said you crossed Heather Street?

A. That is right.

Q. What did you do then?

A. I proceeded to make a left hand turn, to go into a service station for some gas.

Q. Before turning, did you give any signal to indicate the turn?

A. Yes, I made a left hand signal.

Q. What do you mean by that?

10 A. You put your hand straight out, for a left hand signal.

Q. Now, before making this left turn, did you look to see where the streetcar was?

A. Yes. It was away down, about to cross Willow Street then. That is about a block back.

Q. A little over a block back? A. That is right.

Q. Did you observe how fast he was travelling at that time?

A. It was too far back to notice how fast it would be going. That would be hard to determine.

20 Q. So, you made this turn left?

A. I commenced it, yes.

Q. Now, were you satisfied at the time you made this turn that you could make such a turn with safety?

A. Oh, yes. There was traffic going west, but between the first and second car there was a big gap at the time and then it seemed to close up and I didn't think I could get through with safety after that.

30 Q. When did this gap close up, after you stopped on the street?

MR. FARRIS: Don't put words in his mouth, please, Mr. Spring.

THE COURT: There was a big gap, that is, in the west-bound traffic.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Examination -
continued.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No.11

M.O. Sigurdson,
Examination -
continued.

MR. SPRING: He is speaking of the westbound traffic.

THE COURT: Which seemed to close up.

MR. SPRING: Q. When did this gap close up?

A. Well, just as I was about to complete my turn it seemed to close in so much that you couldn't get through it with safety.

Q. So, what did you do? A. I stopped there.

Q. After you had stopped, did you look around to see where the streetcar was? A. Oh, yes.

10

Q. Where was it then?

A. He was coming, oh, about -- it must have been half a block, 200 or 250 feet behind me.

MR. FARRIS: Q. I am sorry, I didn't get that.

A. He must have been a good half block behind me.

THE COURT: Q. You said 150 feet?

MR. SPRING: No, he said 200 to 250 feet.

THE WITNESS: 200 to 250 feet, approximately.

THE COURT: A half a block, about 250 feet.

MR. SPRING: That was when he looked, after he stopped.

20

THE COURT: That is when you stopped?

A. Yes, that is right.

THE COURT: A. Yes.

MR. SPRING: Q. What did you do then?

A. Well, I seen the streetcar was coming and I took another look at the traffic?

Q. Which traffic?

A. The westbound automobile traffic, and there didn't seem much chance, and I took another look at the streetcar and he was coming fast

30

across Heather Street, and I put my car in reverse and tried to get out of there.

In the Supreme
Court of
British Columbia

Q. Did you manage to get off? A. No.

THE COURT: Q. Then you looked at the streetcar and you say it was coming fast.

Plaintiff's
evidence.

A. That is right.

No. 11

Q. "So I tried to reverse it. Then the car hit me." A. That is right.

M.O. Sigurdson,
Examination -
continued.

10 MR. FARRIS: My friend is asking whether he should mark on the same map, Exhibit 1. I am suggesting we keep them separate.

THE COURT: Whatever you agree on, but I think it is better, because it keeps them separate.

MR. FARRIS: That will be Exhibit 3 -- Exhibit 5, or Exhibit 1-A.

THE COURT: Call it Exhibit 1-A.

(MAP MARKED EXHIBIT NO. 1-A)

20 MR. SPRING: Q. I show you this map (producing). I want you to mark on that map the position of your car, when you stopped on the tracks.

A. This is the north tracks, or the south tracks, is that right (indicating)?

Q. Yes. This is west, and this is going east, and this is Heather Street (indicating). This is a garage you say you were turning into (indicating). I want you to mark the position of your car, when you stopped.

A. When I first stopped?

Q. Yes, on the tracks. A. Yes.

30 Q. Mark it with a figure 1, would you, please.

A. (Witness complies).

Q. Now, I want you to mark the position --- you said you looked back and saw the streetcar, which appeared to be 200 to 250 feet back. I

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Examination -
continued.

want you to mark where you think the streetcar was, when you stopped and looked back.

A. Oh, he would be coming along about here (indicating) Here is the intersection, here (indicating).

Q. That is right, that is approximately right.

A. About here (indicating).

Q. Now, down on the bottom there is an insert here in the map, showing the intersection of Heather Street and the intersection of Willow Street. You said when you commenced your turn that you looked for the streetcar. Will you mark on there where the streetcar was when you first looked back, at the time you commenced to make your left turn? Would you mark it on the lower map? Would you mark that 3? The position of the streetcar, when you looked, after stopping, has been marked 2.

10

Now, before you made that left turn, did you see this westbound automobile traffic you have been talking about?

20

A. Yes, but there was a big gap between the first and second car.

Q. How many cars were coming, did you notice?

A. Oh, there were three or four.

MR. FARRIS: Q. I beg your pardon?

A. Probably three or four, I don't know. I just forget.

MR. SPRING: Q. Now, you said that after taking another look at the westbound traffic, you again looked at the streetcar and it was coming just across Heather Street. Would you mark on that map where its position was, when you looked on this last occasion? Would you mark that 4, please.

30

A. (Witness complies).

Q. What part of your car was struck by the streetcar?

A. I was struck on the left frontdoor forward and on the axle and the fender on the left front side.

In the Supreme
Court of
British Columbia

Q. Was your hand out of the door, at the time of the collision? A. Yes.

Plaintiff's
evidence.

THE COURT: Q. What do you mean by that? Where was your hand? A. It was out.

No. 11

Q. Tell us where your hand was. A. It was out.

M.O. Sigurdson,
Examination -
continued.

10 MR. SPRING: Q. Yes. Where was your hand, at the moment of collision?

A. It was outside the car, because it was stopped, and I was making a stop signal, for being stopped there.

Q. How far was your car carried by the streetcar?

THE COURT: I thought you were trying to back up -- however, --

MR. SPRING; Q. How far was your car carried by the streetcar, after the impact?

20 A. I don't know. I went into the ambulance and went up to the hospital.

Q. What damage did your car suffer?

A. It was a total loss. The B.C. Electric adjuster told me to sell it for salvage or for scrap, for whatever I could get out of it.

Q. Did you sell it for scrap?

A. Yes. I got \$100,00 for it.

THE COURT: What was it worth?

MR. SPRING: Yes, I was going to ask that.

30 THE COURT: What is your claim for that?

Q. It was a Chev., of what year? A. 1933.

Q. 1933.

MR. SPRING: Q. How long had you owned it?

A. About a year and a half.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Examination -
continued.

THE COURT: Fifteen years old.

MR. SPRING: Q. How much did you pay for it?

A. \$450.00.

MR. FARRIS: You owned it a year and a half, It
didn't owe you much.

MR. SPRING: Q. What was the value of the car, do
you consider, at the time of the accident?

A. Well, when I first got it, it had suffered a
lack of attention during the war, when you
couldn't get parts, and I had to fix it up and
put new tyres on it, and it was in good shape. 10

Q. What do you think the value was, at the time of
the accident?

A. I think it was worth what I paid for it.

THE COURT: Q. \$450.00? A. \$450.00.

MR. SPRING: Q. How long had the new tyres been
on it?

MR. FARRIS: We won't dispute it.

MR. SPRING: My friend is not disputing the value.

THE COURT: Mr. Farris said that is all right. 20
You got \$100.00, and your loss was \$350.00.

A. Yes, that is right.

THE COURT: This is a good point to adjourn. We
will adjourn until 2.30. I should tell you,
gentlemen, of the jury, not to discuss the case
during this or any other adjournment with any
outsiders, or allow anyone to approach you on
the matter. We will adjourn until 2.30.

(PROCEEDINGS RESUMED AT 2.30 P.M.)

In the Supreme
Court of
British Columbia

MARVIN OSCAR SIGURDSON, resumed.

Plaintiff's
evidence.

THE CLERK: You are still under oath, witness.

DIRECT EXAMINATION BY MR. SPRING RESUMED:

No.11

Q. Mr. Sigurdson, as a result of this accident you suffered injuries to your hand, did you?

M.O. Sigurdson,
Examination -
continued.

A. That's right.

Q. And you heard the doctors describe the injuries? A. Yes.

10 Q. Those are the injuries you suffered as a result of the accident. A. That's right.

Q. And were you moved to hospital.

A. Yes, I was.

Q. How did you go there?

A. I went there by ambulance that was parked on the corner of Willow and Broadway.

Q. And how long were you in hospital on that occasion? A. I was there two weeks.

20 Q. And it was while you were there on that occasion that Dr. Ganshorn first operated on you?

A. He operated on me when I got him in.

MR. FARRIS: I am not disputing any of that evidence.

MR. SPRING: Q. Were you also attended by another doctor at that time?

A. I got them to call in Dr. Hunter and he assisted Dr. Ganshorn on the operation.

Q. Dr. Hunter was called first? A. Yes.

Q. And he called in Dr. Ganshorn?

30 A. That is right.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Examination -
continued.

Q. I show you a bill from Dr. Hunter.

MR. FARRIS: That's all right. How much is it?

MR. SPRING: A bill for \$145.00 from Dr. Hunter.

(DR. HUNTER'S ACCOUNT MARKED EXHIBIT 5)

Q. Did you receive a bill also from the Vancouver
General Hospital? A. That's right.

MR. FARRIS: We won't dispute the hospital bill.
What about this wonderful Government institu-
tion we have?

A. They paid the second hospital, the time I was 10
in the second time.

MR. FARRIS: Q. You didn't get it the first time?

A. No, that wasn't in at the time.

Q. This \$446.05 hasn't been paid, is that right?

A. Yes, that's right.

(VANCOUVER GENERAL HOSPITAL ACCOUNT MARKED
EXHIBIT NO. 6)

THE COURT: Q. There was another hospital bill
which the government paid, is that right?

A. Yes, that isn't included. 20

THE COURT: You are not claiming that?

MR. SPRING: Q. How much was that other bill?

A. It was \$78.00.

MR. SPRING: I think that is a claim for the
plaintiff, my lord. I think it has been held.

MR. FARRIS: No, he isn't liable for the bill.

MR. SPRING: The plaintiff is paying his annual
premiums and therefore he is entitled to get
certainly his premium back.

MR. FARRIS: If you can get the premium back 30
from the government I have no objection.

MR. SPRING: Q. Was your arm in a cast when you left the hospital? A. Yes.

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Q. How long did it remain in a cast?

A. Well there was a series of casts. Oh, about eight months, I guess.

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evidence.

Q. And eventually Dr. Sargent operated on your hand.

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A. Yes. He took a graft from my leg and put it on.

M.O. Sigurdson,
Examination -
continued.

10 Q. You have some other bills. This bill is from Drs. Whitelaw and McIntosh, \$5.00 for X rays. Is that the total bill you received from these people? A. No, it isn't.

Q. How much was it?

A. There was a bill for \$35.00.

Q. And \$30.00 had been paid? A. Yes.

Q. And this \$5.00 remains to be paid?

A. That's right.

MR. FARRIS: Q. Was the \$30.00 paid by you?

A. It was paid by an insurance company I had.

20 MR. SPRING: Q. What insurance was that?

A. The M.S.A.

(ACCOUNT OF DRS. WHITELAW & MCINTOSH MARKED
EXHIBIT NO. 7)

THE COURT: You are not claiming that?

MR. SPRING: My lord, I am not sure on that point. I think we are claiming.

THE COURT: If you have any authority on it you can let me know, but I would like to submit it to the jury one way or the other definitely.

30 MR. SPRING: Q. There are two bills here from Dr. Digby Leigh and Associates, totalling \$60.00.

(TWO ACCOUNTS OF DR. LEIGH AND ASSOCIATES
MARKED EXHIBIT NO. 8)

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M.O. Sigurdson,
Examination -
continued.

MR. SPRING: I have a bill from A. Lundberg and Company for a splint, \$8.00.

(ACCOUNT OF LUNDBERG COMPANY, MARKED
EXHIBIT NO. 9)

Q. Now if you have any other expenses in connection with this accident?

A. Yes there was storage on my car.

Q. How much did that amount to?

A. Storage and towing was \$18.50, I believe and I had a good lumberman's jacket ruined, worth \$15.00, and there was a shirt. 10

THE COURT: Q. Was that the new price?

A. It was just like new. I took taxis from the hospital.

MR. SPRING: You mentioned a shirt? A. Yes.

Q. How much was that? A. \$3.00.

Q. And taxis, did you say?

A. Yes, I had a lot of transportation involved when I was unable to get around.

Q. Where to? 20

A. From the hospital and to the doctors.

Q. In connection with this injury? A. Yes.

Q. THE COURT: Have you got the bill for them?

A. No, I haven't any taxi bills.

MR. SPRING: Q. What would your taxi and transportation amount to? A. At least \$25.00.

Q. Did you have any other bills?

A. Yes, I had drugs \$5.00.

Q. Would that be \$5.00 even or is that your estimate? 30

A. That's an estimate. It was more than that.

Q. Did you ever get a bill from the ambulance company?

A. No, but I imagine it will be along.

Q. You haven't received one to date? A. No.

MR. CAMERON: I think one came to the office.

MR. SPRING: Q. Apparently the B.C. Electric paid the ambulance.

A. Then I have another one too.

THE COURT: Q. What is that?

10 A. I didn't work for eleven months.

MR. SPRING: We will come to that.

THE COURT: That isn't billed, you know.

MR. SPRING: Q. Now your hand; are you able to use that hand for your trade as millwright any more? A. No.

Q. Your occupation prior to the accident was a millwright? A. That's right.

Q. And does that trade require the use of both hands? A. Yes, it does.

20 THE COURT: Q. Where did you work?

A. Giroday Sawmills.

Q. That is the Old Rat Portage place?

A. That's right.

MR. SPRING: What were you earning with Giroday Sawmills at the time you had this accident?

A. It would amount to about \$53.00 a week.

Q. And how long were you off work after the accident? A. About eleven months.

30 Q. So what would your total loss of wages be for that eleven months, estimated?

A. About \$2300.00.

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M.O. Sigurdson,
Examination -
continued.

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M.O. Sigurdson,
Examination -
continued.

Q. After that eleven months you commenced working again, did you? A. Yes.

Q. What kind of work were you able to get?

A. All I could find was a service station attendant.

Q. That is at a gas station? A. Yes.

Q. How many hours a week did you work at Girodays?

A. Forty hours, five days a week.

Q. What kind of work are you doing now?

A. Still working in a service station. 10

Q. When you started working in the service station what wages did you draw then?

A. \$35.00 a week.

Q. And how many hours were you working?

A. Well, it was supposed to be six days, but working in a service station there is always somebody comes in just about the time you want to go home and you work an extra hour or two.

Q. It was supposed to be 48 hours? A. Yes.

Q. But you worked more than that? A. Yes. 20

Q. And got \$35.00? A. Yes.

Q. Are you still in the same service station?

A. I am in a service station on Cambie.

Q. Is that the same one? A. No.

Q. How much are you making now?

A. About \$40.00 a week.

THE COURT: Q. The same company?

A. Still the Imperial Oil, yes.

MR. SPRING: Q. Did you make any attempt to find any other kind of work that would be better? 30

A. I went down to the B.C. Electric Railway Company to apply for a job.

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Q. Anywhere else?

A. Just the newspapers and stuff like that; here and there and all over.

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Q. You haven't been able to get anything else?

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A. No.

M.O. Sigurdson, Examination - continued.

THE COURT: Q. What is your age? A. 25.

MR. SPRING: Q. You are 25 years old now?

10 A. Yes.

Q. How old were you at the time of the accident?

A. 23.

Q. What are your prospects on increasing your present earning power? A. There is no prospects.

Q. Before the accident occurred what prospects did you have at that time of increasing your earning power in your trade?

20 A. Well a tradesmen wages is always increasing with the times and in the course of time you can get up to be a foreman or superintendent. It might take a few years but there is still always that to look forward to.

Q. What wages are millwrights being paid nowadays?

A. They are being paid \$1.55 an hour; about \$65.00 or \$75.00 a week, I guess.

Q. How much a month would that amount to?

A. About \$250.00 or \$260.00, I imagine.

Q. What does a millwright foreman get?

30 A. Oh, better than \$300.00 a month.

THE COURT: A 40-hour week is \$62.00.

MR. SPRING: Q. Have you any idea how much cash

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M.O. Sigurdson,
Examination -
continued.

it would take for you to purchase an annuity to pay you \$100.00 a month for life from now

MR. FARRIS: There are proper ways to prove that if you wish to prove it.

MR. SPRING: I am asking the witness.

MR. FARRIS: Unless you can prove he is an expert on these things.

MR. SPRING: Maybe I will have to prove it, my lord.

THE COURT: All he can say is what somebody told him. There are different ways of getting annuities; different figures. There is an insurance company annuity and the government has a system. It wouldn't be hard to get those figures.

10

THE WITNESS: I have them here, sir.

MR. FARRIS: That is hearsay evidence.

THE COURT: Q. Somebody told you?

A. Well, I have a solicitor acting for me.

THE COURT: Unless Mr. Farris will agree --

20

MR. SPRING: Have you found out what it would cost for you to purchase an annuity?

THE COURT: No. You cannot prove it that way. Mr. Farris objected. If you have the figures from the proper sources and submit them to Mr. Farris, perhaps you may agree on them. There will be time enough to do that later on. It costs a terrific amount of money to buy a one-hundred dollar a month annuity, I know that.

MR. SPRING: That is correct. I am not saying one-hundred dollars, but I am establishing the rate and cost to show this man's loss, and I think it has been held in the Court of Appeal that that is a good measure of damages.

30

THE COURT: Mr. Farris is objecting to it.

MR. SPRING: Well I have submitted the pamphlet I propose to put in as an exhibit.

THE COURT: Give him a chance. You are not going to finish this case today.

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MR. FARRIS: We are not going to pass on that now. Go on.

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MR. SPRING: I want to reserve the right to put it in as an exhibit.

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10 MR. FARRIS: I am not going to raise trifling objections. We will look at it and if we think it is fair we will admit. In any event our friend will have an opportunity to meet it later if necessary.

M.O. Sigurdson, Examination - continued.

MR. SPRING: Thank you.

Q. Are you married? A. Yes.

Q. How many children have you?

A. One little girl.

CROSS EXAMINATION BY MR. FARRIS:

Cross-examination.

Q. You were married since the accident? A. Yes.

Q. What is your position in the service station?

A. Attendant.

20 Q. Is that the highest job there is in that kind of work? A. Yes, unless you own it.

Q. There are no supervisors? A. No.

Q. Or any other jobs in connection with the service station? A. No.

Q. Who looks after you, for example, that you do your work right? A. I do.

Q. Who looks after you. Is there anybody above you? A. The fellow that owns the place.

30 Q. I thought the oil company owned most of these service stations?

A. No, they are leased off the oil company.

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M.O. Sigurdson,
Cross-
examination -
continued.

- Q. Does the fellow who owns it work there?
A. No.
- Q. So no one works there except you and somebody under you. A. There are two of us.
- Q. Which is the head -- you or the other fellow?
A. About equal.
- Q. You both get the same wages? A. Yes.
- Q. How long have you been a mill worker?
A. I had been actually in the mill for about nine months.
- Q. You were born on the prairies? A. Yes.
- Q. When did you leave the prairies? A. In 1938.
- Q. And you came out here? A. Yes.
- Q. What was the first job you got?
A. I went to school in Langley Prairie.
- Q. And how far did you go in school? A. Grade 10.
- Q. I ought to know -- I have enough children and grandchildren -- but what grade is the last grade before you go into high school?
A. Eight.
- Q. So you were how many years in high school?
A. Two.
- Q. And you only had another year to go in high school?
A. There is 11 and 12. I was only in ten.
- Q. After you got through with your studies in high school did you specialize in anything in high school?
A. Not at the time; except it was the basic subjects.

10

20

30

Q. Did you make a pretty good record in school?

A. Yes.

Q. You were pretty well in your class, were you?

A. Usually, yes.

Q. And you worked pretty hard at it, I suppose? I am not asking this question lightly, because I am suggesting quite seriously that there are a good many jobs available for boys coming in-
to this country without working with their left
hands. After you got through high school, what
was your first job?

A. In a furniture factory.

Q. How did you get along there? A. Very well.

Q. First class? A. Yes.

Q. What kind of a job did you have there?

A. I was in the mill part of the furniture factory preparing the lumber for the furniture.

Q. How did you come to get that job?

A. I went to work in the shipyards. There was no
call -- the war was well under way then.

Q. I suppose there is lots of promotion in the
furniture business if you stay with it, isn't
there? A. The wages aren't so good.

Q. Isn't there promotion?

A. Well, I imagine there is.

Q. Then you went to the shipyards? A. Yes.

Q. How long were you there?

A. About the same length of time.

THE COURT: Q. Two years?

A. No, about nine months.

MR. FARRIS: Q. Was that job over? A. No.

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M.O. Sigurdson,
Cross-
examination -
continued.

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M.O. Sigurdson,
Cross-
examination -
continued.

Q. How did you come to leave?

A. When I left the furniture factory I had --

Q. You were quite a kid then. How old were you then? A. Sixteen.

Q. And what wages were you getting in the furniture factory?

A. I started about 35 cents an hour.

Q. Eight hours a day? A. Yes.

Q. What did you end up with?

A. Fifty-cents an hour. 10

Q. You were between 16 and 17 then? A. Yes.

Q. Then you went in the shipyards? A. Yes.

Q. And what did you get there?

A. I think about 55 cents an hour; something like that.

Q. Was there any increase then?

A. Well, I had to be on planers in the furniture, that's one reason I left. My lungs couldn't stand the dust at that time.

Q. Did that ever bother you in the mill? 20

A. No. I stayed out of it for about five years.

Q. After you left the shipyards what did you do then?

A. I had a job in a machine shop operating the lathe.

Q. How long did you work at that?

A. About fifteen months.

Q. And how much did you get there?

A. Eighty-cents an hour.

Q. Why did you quit that? A. I joined the Navy. 30

Q. How long were you in the Navy? A. Two years.

Q. And after you quit the navy what did you do?

A. I worked on Granville Island in the National Machinery.

Q. How much did you get there? A. \$1.00 an hour.

Q. Why did you quit that?

A. I went to work in another machine shop.

Q. A better job? A. Well it wasn't.

Q. What did you do in that machine shop?

10 A. I operated a lathe. That was a very small shop and there wasn't very much work there after a while.

Q. After you left there what did you do?

A. I went fishing.

Q. What kind of fishing?

A. They call it bream trolling.

Q. Were you on your own or with a friend?

A. With a friend.

Q. How long did you stay at that?

20 A. Four months.

Q. You made \$1,000 I think there in the four months? A. Yes.

Q. Anything you turned your hand to you seemed to be able to do a good job. Then you got in this mill? A. Yes.

Q. And you were then only about 23? A. Yes.

Q. And what was the first job you started on?

A. Millwright's helper.

Q. What experience had you at that time?

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M.O. Sigurdson,
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examination -
continued.

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M.O. Sigurdson,
Cross-
examination -
continued.

A. In connection with machinery?

Q. Yes. You had not been in a mill before?

A. I went to the National Machinery to overhaul the equipment for them and I had experience in the shipyards.

Q. So you started at as helper. Did you get any further than that? A. Yes, millwright.

Q. Since you were hurt you went to the newspapers for a job. That's about the last place on earth to go, isn't it? 10

A. Well it was a good prospect.

Q. I suppose the B.C. Electric would be worse than that. What kind of a job were you looking for at the B.C. Electric?

A. I figured I could take a driving job.

Q. What do you mean a driving job?

A. Well you see a lot of staff cars with chauffeur's and stuff like that.

Q. I don't think you need to depend on that hand. You are pretty good. Did you ever see any chauffeur driving Mr. Cameron around? 20

A. No, not yet.

Q. What else beside a chauffeur did you think you might get?

A. I was asking them what they had, but I didn't get much satisfaction.

Q. That is the only place you tried for a job?

A. No, I went around to different places and the Selective Service.

Q. Selective Service? 30

A. The National Employment Office.

Q. What clerical work did you try to get?

MR. SPRING: The Selective Service is the place you go for any job.

MR. FARRIS: What kind of a clerical job did you apply for.

A. I never had any experience in a clerical job.

Q. But you are pretty young yet, you know?

A. I have got a wife and family to keep. You can't go to school and keep them too.

10 Q. There are lots of fellows without the education you have got in clerical jobs. I am not minimising your injury but I want to see what opportunities you had. I will leave it at that. I want to come to this accident. You passed the streetcar, didn't you? A. Yes.

Q. At Laurel Street, A. Yes.

Q. That is two blocks west of Heather?

A. That's right.

Q. And you told us today that car was just stopping. A. That's right.

Q. You don't know whether it was just stopping or starting?

20 A. I am pretty sure it was just starting.

Q. I happen to have your evidence before me, and I am sorry to say that in a good many things I must check you on your evidence.

THE COURT: What is the street next to Heather west?

MR. FARRIS: Laurel.

THE WITNESS: Willow.

MR. FARRIS: The one between Heather and Laurel is Willow.

30 THE COURT: It is Heather and Willow.

MR. FARRIS: Yes.

Q. Do you remember being examined for discovery?

A. Yes.

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continued.

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M.O. Sigurdson,
Cross-
examination -
continued.

Q. That was about how long ago? A. One year.

Q. One year ago? A. Yes.

MR. FARRIS: I take it, gentlemen of the jury, you all know what that means. Each side has a right to ask the other side to be sworn and ask them all about it and the stenographer takes it down and either side can put in at the trial any part of it. Later we will probably see my learned friend putting in some of the motor-man's evidence. I am now referring to what Mr. Sigurdson said when I examined him. 10

Question 175 at page 14 of the transcript:

"Q. Where did you first see it" -- that is the streetcar -- "where were you?"

A. Away back by Laurel Street, I went by it.

Q. You passed it?

A. Yes.

Q. Was it stopped when you passed it?"

Do you remember the answer you gave?

A. Yes. 20

Q. What was it?

A. It was just stopping or starting.

Q. Why have you changed it?

A. I am pretty sure it was just stopping or starting.

Q. At the time you said: "either just stopping or starting; it was going slow." Do you know any more about it now than when you made that statement?

A. Yes, but I have had a year to think it over. 30

Q. You had one year to forget about it. So after thinking about another year you change that and say the car was just stopping?

A. I am sure it was.

Q. What do you base that on outside of just thinking it over?

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A. Well it was what I saw that night.

Q. You gave a statement and signed it, didn't you, to somebody in the company? A. Yes.

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evidence.

Q. And that was back in August 1948?

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A. That's right.

M.O. Sigurdson,
Cross-
examination -
continued.

10 Q. You hadn't had as long to think it over but your memory should have been better then, wouldn't you think so? There have been some red lines put on this since, but we won't bother with them. I propose to ask you now if that is your signature? Take a good look at it.

MR. SPRING: I would like my learned friend to ask him whether he wrote this report.

MR. FARRIS: He didn't write it. I am going to find out all about it.

Q. You went to see somebody. Did you go up to the company office? A. Yes.

20 Q. You went there voluntarily, did you? A. Yes.

Q. And somebody wrote down your statement?

A. Apparently.

Q. And you saw them doing it. There is no doubt about it, is there? A. No.

Q. As you were making the statement somebody in the office was writing it down and you were there to get damages, weren't you?

A. Just to see what was what.

30 Q. What was what in your mind was damages, wasn't it? A. Yes.

Q. So you were there to see if the company would pay you damages, and in order to get them to pay you damages you were telling them your story? A. Yes.

Q. You weren't being taken advantage of or anything? A. I don't know.

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M.O. Sigurdson,
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continued.

Q. Do you suggest you were being taken advantage of? A. No.

Q. You realized you were giving a statement?

A. Yes.

Q. And that the young man up there was taking it down? A. That's right.

Q. And you didn't object? A. No.

Q. You allowed him to take it down?

A. It was all the truth.

Q. And after he took it down he let you read it? 10

A. I never seen it.

Q. You signed it?

A. I signed it but I didn't read it through.

Q. Did he read it to you?

A. I don't know whether he did or didn't.

Q. Do you mean you would sign it without knowing what was in it?

A. I wasn't very familiar with the law at the time.

Q. Here is what you signed as having said. 20

MR. SPRING: My lord, I object to that. If my learned friend wants to ask this witness certain questions that is all right.

MR. FARRIS: I am putting it to the witness that he signed it.

THE COURT: He has already said that.

MR. FARRIS: Then I want to call his attention to-

THE COURT: How are you going to avoid putting it in?

MR. FARRIS: I will put it in. 30

THE COURT: You can't have part of it. You will have to have all.

MR. FARRIS: I have no objection to putting it all in.

THE COURT: It will have to be marked as an exhibit and then you can go ahead and cross-examine him.

MR. SPRING: I don't know that that is admissible, my lord.

10 MR. FARRIS: My friend can take his position.

MR. SPRING: I understand there are some comments on it.

MR. FARRIS: I am confronting this witness particularly with the parts that are inconsistent with his present evidence and I am very sorry I have got to do that.

THE COURT: I suppose that is your duty.

MR. FARRIS: Yes. It isn't always a pleasant duty.

20 THE COURT: If there are some comments on it they should be eliminated.

MR. FARRIS: There is some underlining which shouldn't be there. That has been done since.

THE COURT: It can be rubbed out.

MR. FARRIS: It can be ignored, It would have to be erased.

THE COURT: Is it in ink?

MR. FARRIS: The underlining is in pencil.

THE COURT: That will rub out.

30 MR. FARRIS: But the writing is in ink. We can rub them out.

MR. SPRING: This statement of course, my lord, isn't under oath.

THE COURT: This statement was apparently taken by somebody in the B.C. Electric, and the witness says he signed it without looking at it.

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M.O. Sigurdson,
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M.O. Sigurdson, Cross-examination - continued.

MR. FARRIS: He isn't sure whether it was read to him.

MR. SPRING: He doesn't know whether it was written down, what he said.

THE COURT: It was signed by him and there it is. He may say now, "That isn't what I meant. That isn't the way I understood, or that isn't what I said." He signed it and it will have to be an exhibit if you want to cross-examine on it.

MR. FARRIS: Q. I call your attention, witness, to the fact that the document you signed now being tendered as an exhibit contains this statement over your signature:

10

"I knew there was a street car behind me as I had passed it at Laurel Street and it was then either just stopping or starting up".

I suggest to you witness, that is the identical language you used over a year later.

A. Well I will let it go at that then.

Q. What do you mean by that?

20

A. Well I will say it was either just stopping or starting up. At any rate it was travelling real slow.

Q. Having let it go at that, as you are confronted with it in two places, I ask you now that what you meant by thinking it over is you changed your story?

A. Well it seemed to come clearer in my mind when I got thinking about it.

(STATEMENT BY PLAINTIFF MARKED EXHIBIT NO. 10)

30

MR. FARRIS: I want to see the exhibit that was put in this morning where he put the motorcar when he stopped -- Exhibit 1-A. I don't know whether you gentlemen have seen this or not. I attach some importance to it. There was one corner of it projecting into the devil strip, and I asked him to visualize if that is where his car was when hit by the street car.

MR. SPRING: But, my lord, my learned friend made the statement he wanted to show the jury the position the witness marked the streetcar when he stopped, and I think that is the position. I think that is the position he marked after he had been stopped.

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MR. FARRIS: I am going to give this witness a full chance to tell his own story, and I am going to confront him also with what he said on discovery.

M.O. Sigurdson,
Cross-
examination -
continued.

Q. Does 1-A, the point you have marked, show the motorcar as it was when you stopped?

A. That's right.

Q. Did you ever go any further ahead than that?

A. I don't think so.

Q. That shows that you were barely at the edge of the devil strip?

A. Yes. There is the line there (indicating).

20

Q. I suggest that you have told us on discovery that your car was at least in the middle of the devil strip.

MR. SPRING: If he is going to confront the witness with the discovery, I want to know the questions.

MR. FARRIS: I know how to cross-examine the witness, my lord.

MR. SPRING: If the examination for discovery --

MR. FARRIS: When my friend gets through with his objection I will ask your lordship to rule.

30

THE COURT: You will have the question there.

MR. FARRIS: I have a right to ask him these questions without showing them to him.

THE COURT: You can ask him did he say something on the previous occasion.

MR. FARRIS: Does your lordship rule against my question.

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continued.

THE COURT: I am ruling that you may ask him if he didn't say something different on a previous occasion.

MR. FARRIS: But I submit with deference that I may put it the way I did.

THE COURT: And if he says something different on his discovery you have got his answer. If he says he didn't say something different on discovery, or doesn't remember, you may face him with discovery. That is perfectly simple. 10

MR. FARRIS: There are a lot of ways to cross-examine, but I submit that I should be allowed to have my own head as to how I should cross-examine.

THE COURT: What was your question?

MR. FARRIS: I was suggesting that when he gave his evidence he said the motor car was out in the centre of the devil strip.

THE COURT: His evidence?

MR. FARRIS: On discovery. 20

Q. Is that right? A. Yes.

Q. This doesn't show it that far?

A. It's a little bit short.

Q. So you would change that now and put that car so that you have the front of it out in the middle of the devil strip, is that right?

A. It's a pretty small scale. It isn't far out.

Q. I am talking about the actual facts when you had your car there. Was the car in fact over into the middle of the devil strip? 30

A. It was on the devil strip.

Q. Was it in the middle of the devil strip?

A. It's hard to say.

Q. Was it about in the middle?

A. Close to it, yes.

Q. And it was there when you stopped? A. Yes.

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Q. And how long did it stay in that particular place?

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evidence.

A. Well, it's hard to estimate time.

Q. After you got it there what did you do?

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A. I stopped there.

Q. Why did you stop there?

M.O. Sigurdson,
Cross-
examination -
continued.

A. To wait for a car going in the opposite direction.

10 Q. There was more than one going in the opposite direction?

A. There was lots of room between the first and second.

Q. I say there was more than one car going by?

MR. SPRING: Let the witness finish his answer.

MR. FARRIS: I am trying to be polite and not hurry this witness but my friend has no right to interrupt my cross-examination.

20 Mr. SPRING: I don't wish to interrupt my friend, but I think the witness should be allowed to give his answer.

Mr. FARRIS: He did complete his answer.

MR. SPRING: He didn't.

THE COURT: Q. Was there something you wanted to add to that. You were asked if the car was out in the middle of the devil strip, and that you stopped because of another car coming west?

A. Yes.

30 Q. Then he said there was more than one car coming west? A. Yes.

Q. Is there anything else you want to say about it?

A. No.

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M.O. Sigurdson,
Cross-
examination -
continued.

MR. FARRIS: Q. In fact there were four cars al-
together? A. Yes.

Q. And you suggested you thought at one time there
was a gap between the first and second cars?

A. Yes.

Q. How big a gap. How many car lengths?

A. About a street car length.

Q. How fast were those cars going?

A. They were travelling slow.

MR. SPRING: I didn't catch the answer to that 10
question.

THE COURT: They were travelling slow.

MR. FARRIS: I don't think my cross-examination
should be interrupted because my friend isn't
following the cross-examination. Cross-examina-
tion is only effective if it is allowed to pro-
ceed, and with all deference I don't think I
should be unnecessarily interrupted.

MR. SPRING: The witness said a streetcar length
and my friend proceeded on the assumption he 20
had said it was a carlength gap.

THE COURT: Just a moment. Counsel has the
privilege to re-examine if something is not
clear. We had better get on.

Q. There was a driving gap of three or four car
lengths between cars one and two? A. Yes.

MR. FARRIS: Q. And those were motor car lengths?

A. Yes.

Q. There were no street cars going west? A. No.

Q. But there were three or four or more motorcars 30
going west? A. That's right.

Q. And you say they were travelling on the street
car track, is that right?

A. The westbound traffic?

Q. Yes. A. No.

Q. They weren't? A. No.

Q. They weren't on the track? A. No.

Q. They were over on the far side?

A. On the paved section.

Q. On the far side of the westbound track?

A. Yes.

10 Q. I suggest that you told us different to that
 on the discovery. I will have that looked up.
 And how many car lengths between them?

A. There must have been three or four.

Q. There might have been only three? A. Yes.

Q. And these cars were going how fast?

A. They were going average city speed.

Q. And do you seriously suggest that you expected
to dodge in between those two cars with that
space between them?

A. What do you mean by car lengths?

Q. I don't know. You tell me.

20 A. Well, a carlength I figure is the length of the
 car plus the room you would follow behind or in
 front of the car.

Q. You mean one carlength?

A. A carlength -- you wouldn't find another car
touching your bumper.

30 Q. But I am asking you to measure how many car
 lengths between number one car and the follow-
 ing car and you told me three or four. Do you
 mean if there had been three or four cars there
 that would be the distance between them?

A. It would be further than that.

Q. You have got a new idea. How far were they
apart?

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Cross-
examination -
continued.

A. In feet I would say about sixty feet.

Q. About sixty feet apart? A. Yes.

Q. And they were going I suppose at least 25 miles
an hour? A. About that.

Q. And you had to travel across both tracks?

A. Yes.

Q. And get into a driveway passed both tracks be-
tween those cars? A. Yes.

Q. And you figured on doing that with those cars
going at 25 miles an hour?

10

A. There was plenty of room there.

Q. How close to the tracks were those cars?

A. Just the other side of the tracks.

Q. How close to the tracks were they?

A. They might have been two feet or something like
that.

Q. And therefore there were no westbound cars on
the westbound car line? A. Street cars?

Q. No, we are talking about motor cars. You are
sure there were none?

20

A. I didn't get the question.

Q. I say you are sure there were no westbound
motorcars on the westbound car line? A. Yes.

Q. Then if there was room to go through why
didn't you go through?

A. The gap seemed to close up too fast. The first
car slowed down or the second one speeded up.
Something happened.

Q. Then why didn't you wait until these four cars
got by?

30

A. Well the street car was a block behind me. There
was ample time in front.

Q. You would have been perfectly safe on the westbound track. There was no car coming the other way?

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A. I was going across the westbound track.

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Q. You were going to cross the westbound track. Why didn't you drive across the devil strip on the westbound track and wait until these other four cars got by?

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10 A. That would have been getting kind of close to the other cars.

M.O. Sigurdson,
Cross-
examination -
continued.

Q. What?

A. That would have been getting kind of close to the other cars going the other way.

Q. But they didn't need to hit you. Why didn't you drive ahead? A. They had the right of way.

Q. Why didn't you swing down on the eastbound track and go down to the next block?

A. I needed some gasoline.

20 Q. You understood my question did you. I asked you why, when you realised you couldn't get across the street before you stopped you didn't swing your car straight down on the eastbound track and go to the next block, turn there, and come up to the garage?

A. Well, that would be getting away from where I was going.

Q. Half a block? A. Yes.

30 Q. So instead of taking the trouble of going half a block in perfect safety -- you would have been in perfect safety then, wouldn't you?

A. Yes.

Q. When you found it wasn't safe to cross over, I am suggesting all you had to do was to keep going straight down to the next block?

A. My car was started on the turn.

Q. But it is easy to swing it round, isn't it? It had only started on the turn? A. Yes.

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M.O. Sigurdson,
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continued.

Q. I suggest to you if you had gone down you would have been in perfect safety. I asked you why you didn't and your answer was because you had to go that much further out of your way. Is that the real answer?

A. I was getting away from my destination.

Q. That would be too bad if you had to go half a block on the other side of perfect safety. Now I want to read from your discovery. In the first place let me come to the question of speed. Before you got to Heather Street how fast were you going?

10

A. Between 20 and 30 miles.

Q. Did you slow up at Heather?

A. Passing Heather I slowed up.

Q. And how fast did you cross Heather Street?

A. I slowed down to maybe 15 miles an hour or something.

Q. And you continued at that speed or slower until you made your turn? A. Yes.

20

Q. From the far side of Heather until you made your turn you were never going faster than 15?

A. No.

Q. And when you got to the point of turn you were much slower than that?

A. I would be practically stopping when turning.

Q. So all that time that the street car was going 25 miles an hour it had a chance to catch up to you?

A. I don't know whether he stopped at Willow or not.

30

Q. As far as you know he didn't?

A. I couldn't tell you.

Q. You never saw him stop? A. No.

Q. Did you make a sudden turn or an average turn?

A. An average turn.

Q. You were going in, I suppose, to the first driveway and not the second one?

A. That is right.

Q. So that would mean you wouldn't go down and turn straight across but you would curve around?

A. That's right.

10 Q. So that you would have to start your curve before you got opposite the entrance to the gas station? A. Yes.

20 Q. In looking at what I said I was going to ask you before, beginning at question 133 -- you will remember, gentlemen of the jury, I asked the witness a moment ago and he said there were no motorcars. I beg his pardon and yours. I have read this wrong. I read it wrong and yet his answer is equally wrong. So we will read it for what it is worth and you can use your own judgment. I think I used the word north and I should have read that south.

THE COURT: Read the question.

MR. FARRIS: Starting at 127:

"Q. Tell what happened?

A. I was coming down Broadway and I wanted to a turn into this station to fill up with gas. I looked forward and seen there were cars coming and there was gaps in between them."

30 Q. That meant motor cars? A. That's right.

"Q. You looked forward to see if cars were coming?

A. Yes.

Q. Were there cars coming?

A. Yes, in the opposite direction.

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Q. Which would that be?

A. That would be going west.

Q. Which carline would they be on?

A. On the north side of the carline."

That is where the mistake is. That is wrong, isn't it?

THE COURT: That's all right.

MR. FARRIS: I have got turned around.

"Q. On the carline tracks farthest from you that is where you saw a car coming from the east to the west?

10

A. Yes.

Q. You said there were gaps between the cars. What did you mean?

A. There was enough space I figured to get through, but they seemed to close up.

Q. How far away was that car when you first saw it?

A. There was more than because another one was coming.

20

Q. What do you mean by that? Were they on the north tracks?

A. Yes.

Q. Two cars both going west?

A. I don't know whether there were two --- there were more than two."

There can be no doubt about that. Is that correct?

MR. SPRING: I would like my friend to continue about three more questions.

30

THE COURT: Q. That is what you said on your examination. A. Yes.

THE COURT: I think there is some confusion there.

THE WITNESS: Maybe he was talking about --

THE COURT: Just a minute please. You see he said: "Which carline would they be on?" and you said "On the north side of the carline."

MR. FARRIS: Let me see the map. I will read all these questions and my friend can give a rest to the springs in his seat for a minute.

Q. Do you remember giving those answers? A. Yes.

10 Q. I will read on:

"Q. Two cars both going west?

A. I don't know whether there were two - there were more than two.

Q. You were going east and you wanted to turn north? A. Yes.

Q. And you saw more than one street car coming from the east?

A. There was no street car, it was passenger car.

20 Q. There was autos? A. Yes.

Q. Two, three or four?

A. We will say three or four.

Q. How close was the closest motor car to you before you started to turn?

A. Close enough that I figured I could not complete the turn."

The witness makes it perfectly clear. Now, my lord, there is no mistake about that evidence.

30 Q. You went on to say that at that time these motor cars were on the north street car line?

A. I believe I said previously that they were on the north side of the street car line.

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continued.

Q. You had said that previously in your discovery?

A. That you just read out there didn't you?

Q. Question 129:

"Q. Were there cars coming?

A. Yes, in the opposite direction.

Q. Which would that be?

A. That would be going west.

Q. Which carline would they be on?

A. On the north side of the carline.

Q. On the car line tracks farthest from you
that is where you saw a car coming from
the east to the west? 10

A. Yes.

Q. You said there were gaps between the cars,
what did you mean?

A. There was enough space I figured to get
through, but they seemed to close up.

Q. How far away was that car when you first
saw it?

A. There was more than one, because another
one was coming. 20

Q. What do mean by that? Were they on
the north tracks? A. Yes."

Your answer was "Yes". That is wrong. I under-
stand you to say now that they weren't on the
tracks, they were north of the tracks, isn't
that right? A. That's right.

Q. If they had been on the tracks it would have
made that much more necessary for you to wait?

A. Yes. 30

Q. Now I am going to read to you questions 138 to
154.

"Q. And you saw more than one street car coming from the east?

A. There was no street car, it was passenger car.

Q. There was autos?

A. Yes.

Q. Two, three or four?

A. We will say three or four.

10

Q. How close was the closest motor car to you before you started to turn?

A. Close enough that I figured I could not complete the turn."

Q. When you started to make the turn you realized that the cars were so close you could not make the turn?

A. I could not complete the turn."

I want you to listen to this witness. I will read that again:

20

"Q. How close was the closest motor car to you before you started to turn?

A. Close enough that I figured I could not complete the turn.

Q. When you started to make the turn you realized that the cars were so close you could not make the turn?

A. I could not complete the turn.

Q. You know that when you started to make the turn?

A. There was nothing coming from behind.

30

Q. You know that when you started to make the turn?

A. There was nothing coming from behind.

Q. Stick to the one thing at a time. You

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looked ahead and saw motor cars coming and you knew after you got on the south tracks you would have to wait to let those cars go by."

There doesn't seem to be an answer to that, and I follow on:

"Q. And you knew that when you started to make the turn? Don't nod your head. Say yes or no.

A. Yes.

10

Q. How fast was that car going?

A. Average city speed.

Q. 25? A. 25 or 30.

Q. And there was some cars behind that?

A. There was a gap between them.

Q. Did you have to wait for more than one car?

A. Well, as I say, I thought there might be a break anyway.

Q. So that you could get through? A. Yes.

Q. Did you think you would have to wait for more than one car going west before you could get across the car tracks?

20

A. It could have been two.

Q. There was another car behind the second one? A. Some distance away.

Q. It was coming up on the other two? A. Yes.

Q. You might have to wait for the three?

A. Possible."

Now were those questions and answers true?

A. Yes.

30

MR. FARRIS: You will appreciate what I have read to you, because gentlemen, this to my mind is

very vital evidence and I don't want any mistake by this witness.

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Q. Now I turn to Question 208.

"Q. You were driving close to the car tracks before you turned to make the turn?

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A. Only in the lane there.

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Q. Bringing you close to the car tracks?

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continued.

A. Yes."

10 By "lane" I suggest what you must have meant was the paved part of Broadway south of the car tracks?

A. That's right.

Q. And you called that a lane?

A. Well a driving lane or strip.

Q. A driving strip on the south side of Broadway which you were on and would have stayed on if you hadn't been going to get your gas?

A. Yes.

20 Q. "Q. You were driving close to the car tracks before you turned to make the turn?

A. Only in the lane there.

Q. Bringing you close to the car tracks?

A. Yes.

Q. You had only to turn a foot or two to be on the car tracks? A. Yes.

Q. At that time you knew this car was following you? A. Yes.

Q. When you started to make the turn I suggest you were watching the motor car?

30 A. Yes.

Q. And you were not watching the street car?

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A. I was watching both.

Q. You suggest that you could watch through the mirror and watch motor cars and street car both?

A. Just a flick of the eye to watch to the rear and to watch forward.

Q. And when you made the flick of the eye the motor car was too close to get in front of it? A. Yes.

Q. You knew you had to wait on the tracks for the motor cars? A. Yes. 10

Q. What was the last thing you did before you started to turn, flick the eye to the motor cars, to the street car or to the motor cars?

A. There is a sequence there, it is pretty hard to remember."

Those questions and answers are true?

A. Yes.

Q. Now turn to question 228, and I want you to be very careful, because I ought to tell you I am reading this because I am going to suggest you weren't frank in your answers, and I don't want to say to the jury after, I want to say it now so that you will know: 20

"Q. I ask you again why didn't you wait alongside the car tracks until you saw those three cars had gone by?

A. There were gaps there.

Q. It was not wide enough? 30

A. It was when I left off.

Q. No, you tell me when you start to turn you could not get in front of the first one?

A. Yes.

Q. I ask why you didn't wait until you got by?

A. Until the first got by?

Q. Yes? A. I did.

Q. Oh no, why didn't you wait in safety along-side the track?

A. It is natural to pull to the side.

Q. You know it is not safe to go on the street car track in the centre of the block, you know it is contrary to all the rules to stop a car in the centre of a block on the car track."

10

My learned friend objected and I put this:

" Did you consider it proper driving to turn on to the street car tracks in the middle of the block and stop suddenly?

A. Providing proper precautions were taken.

Q. What proper precautions were taken?

A. I looked around and made a proper signal.

Q. You knew there was a street car behind you?

A. Yes.

20

Q. And a third motor car coming the other way?

A. Probably.

Q. Did you expect to hold the street car up in the middle of the block?

A. No, I expected to be across before he came.

Q. You told me that you knew there were three and there might be more. Did you expect to be able to wait on the track until three or four motors got by?

30

A. I expected to get through the middle of the gap, but they kept getting closer.

Q. Why didn't you wait on the side?"

This is the part I have in mind:

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"A. There is hardly room to let the street car go by if you stay on the side unless you crowd over."

I will read it again so there will be no mistake about it.

"Why didn't you wait on the side?"

A. There is hardly room to let the street car go by if you stay on the side unless you crowd over."

You knew I meant on the pavement at the side. Do you think that is a fair statement? That is about 22 feet I would say. It shows here 24 feet between the boulevard and the southerly track and you were driving on there right along, you didn't have to crowd over, did you?

10

A. Not to make a lefthand turn.

Q. I am talking about as you go along. I ask you why you didn't wait on the side and that has nothing to do with your lefthand turn. And you said, "There is hardly room to let the street car go by if you stay on the side unless you crowd over". I ask you, is that a fair answer?

20

A. No sir, it isn't.

Q. Let me see your next one:

"Q. Are you suggesting on the south side of Broadway there was not room in the driveway to stop and let the street car go by?"

A. There would be room.

Q. If there was room why do you suggest there was not?

30

A. Providing you crowd the curb."

You didn't have to crowd the curb, did you?

A. No, sir.

Q. And I repeated my question, "Was there room", and you bring up a new answer, "parked cars".

"Q. Were there parked cars there?

A. At the corner.

Q. Were there cars parked east of Heather on the south side of Broadway were you driving along."

Then I make the observation:

"That is a long pause. That does not go in the notes.

A. I guess there was.

10 Q. You don't know? Do you?

A. No.

Q. Are you seriously suggesting" --

this was put to you on Discovery, You were under oath then as you are now --

"Q. Are you seriously suggesting there were cars that interfered with your stopping clear of the railway tracks. That makes you hedge. Let us get the answer now. Let us get the answer?

20 A. Well I guess there was, there usually is.

Q. When you drove along you were on the railway tracks before you turned? A. No.

Q. Were you driving clear of the tracks?

A. Yes.

Q. Then there were not any cars interfering with you? A. No.

Q. Then why draw on these imaginary cars?

A. I don't know.

Q. Were there cars there or not?"

30 MR. SPRING: My lord, the answer to question 252 on my transcript isn't "I don't know".

MR. FARRIS: I beg your pardon. "I don't."

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"Q. Then why draw on these imaginary cars?

A. I don't.

Q. Were there cars there or not?

A. It is quite a while ago.

Q. You don't know? A. No.

Q. Again I ask why in those circumstances you did not wait in perfect safety on the south side at the tracks until the westbound cars passed?

A. There was such a big lot of traffic you -- 10

Q. What?

A. There was no traffic coming behind me.

Q. You knew there were these motor cars coming? A. Yes.

Q. Why didn't you wait until they got by?

A. They might have been by before the streetcar got there.

Q. Why didn't you wait. Did you look to your left and see the streetcar coming after you got on the tracks? 20

A. Yes."

Now so much for that. Have you any explanation you want to offer now as to why you told me that story about having to crowd the curb?

A. I don't think I would have to crowd the curb.

Q. Then why did you say it?

A. I was quite a little bit confused.

Q. Then why did you introduce the subject of motor cars preventing you doing that. All right. I will pass on. I have read these answers. I told you why I was reading them and I have given you an opportunity to explain it. 30

Now if your story is true, when your motor-car stopped you were completely across the rails of the eastbound street car tracks?

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A. The front part of the car, yes.

Q. Completely across the rails and over into the devil strip? A. That's right.

Q. And then you stopped? A. That's right.

Q. And then you started to back? A. Yes.

10 Q. This car of yours had the old style of gears. You had to put your hands down to the hand gear to shift gears? A. That's right.

Q. And when you got hit you had your left hand out? A. That's right.

Q. For what purpose?

A. I was still at a precaution for a stop position.

Q. As soon as you stopped did you put your hand out? A. Yes, I had it out.

Q. And kept it out? A. Yes..

20 Q. So according to your story you then put the car into reverse with one hand? A. That's right.

Q. At that time the motorman could see, if your story is correct, the whole motor car in front of him, is that right? You were then completely across his tracks and the front wheel on the devil strip? A. When I stopped, yes.

Q. What in the world good was it putting your hand out in those circumstances?

A. I had my hand out for a stop signal.

30 Q. But you had the whole motor car there as a stop signal, isn't that right?

A. Well, it is still essential to signal when you are stopped.

Q. That is a very small part of it. I suggest to you witness, that he must have known that when

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you have your motor car across those tracks,
your hand stuck out, it didn't give very much
of a warning? A. I think it did.

Q. So you kept your hand out in this emergency
when you were in this great hurry and put your
car in reverse? A. Yes.

Q. And backed her up? A. That's right.

Q. All with one hand? A. That's right.

Q. And that was your right hand? A. Yes.

Q. And you kept your left hand out all the time? 10

A. That's right.

Q. I suggest to you that what you did was you
came down Broadway and did exactly what Quinn
says, that you put your hand out and started
to make the turn and then stopped and were hit
in that position? A. No.

Q. There would be some sense in putting your hand
out then, wouldn't there? A. No.

Q. Didn't you have a hand to use then? A. Yes.

Q. There would be some sense in that, wouldn't
there? A. Yes. 20

MR. SPRING: I don't like to interrupt my learn-
ed friend again, but I don't believe that is
what Quinn says.

THE COURT: Quinn says he was just a little bit
over the track at an angle, the front part of
his car was over the first rail. Isn't that
what he said?

MR. SPRING: I was referring to the part where
Quinn gave evidence that he signalled and turn-
ed. 30

MR. FARRIS: According to Mr. Quinn he signalled
and started to turn and never got any further
and he never saw him in the devil strip.

THE COURT: Did you say you backed up?

A. Yes.

Q. How far would you say?

A. I backed up until the front part of the car was hit by the step of the street car.

Q. You were moving when you were hit?

A. I was going in reverse.

MR. FARRIS: Instead of getting away from the street car you were getting closer to it?

A. If I had stayed there he would have hit me right in the middle.

10 MR. FARRIS: That is all.

THE COURT: Q. Did you hear the gong ringing?

A. I believe I did, sir.

Q. So when you heard the gong ringing you looked back and saw the car west of Heather Street?

A. Yes.

Q. And you figured it might not be going to stop, so you put your car in reverse and tried to back up, is that right? A. That's right.

THE COURT: That is what you said in the statement.

20 REDIRECT EXAMINATION BY MR. SPRING:

Re-examination.

Q. This statement which you signed at the B. C. Electric Company was written out by somebody at the B.C. Electric Company, is that correct?

A. Yes.

Q. You had no legal advice before doing it?

A. No.

Q. And you told them roughly what happened and they wrote down this report? A. Yes.

Q. And asked you to sign it? A. Yes.

30 Q. And you didn't read it before you signed it?

In the Supreme Court of British Columbia

Plaintiff's evidence.

No. 11

M.O. Sigurdson, Cross-examination - continued.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 11

M.O. Sigurdson,
Re-examination
- continued.

A. No.

Q. And you were not able to say whether this is exactly what you told them? A. No.

MR. FARRIS: He has now admitted that statement is correct, but that doesn't make any difference.

(Witness aside)

DISCUSSION.

THE COURT: Any other witnesses for the plaintiff?

MR. SPRING: No, my lord, that is all the witnesses. I want to put in discovery. 10

THE COURT: This is the motorman, is it?

MR. SPRING: Yes, this is the examination for discovery of the examination of the motorman of the streetcar, James Vincent Calli.

As my learned friend has stated, in these cases we have the opportunity of examining the other party under oath and finding out just what their side of the story is. Pursuant to that privilege I examined the motorman of this street car, James Vincent Calli on December 9th, 1949. He was sworn and all the evidence he gave was under oath, and I ask you to listen very carefully to the questions and his answers. 20

Questions 1 to 18; 20; 21; 24; 40 to 45; 48 to 53; 61 to 63; 71 to 72; 82 to 88.

My lord, that is the plaintiff's case.

No. 12.

In the Supreme
Court of
British Columbia

EXAMINATION OF JAMES VINCENT CALLI, A SERVANT
OF THE DEFENDANT, FOR DISCOVERY.

Plaintiff's
evidence.

No. 12

J. V. Calli
Examination
for Discovery.

EXAMINED BY MR. SPRING:

1. Q. What is your full name?

A. James Vincent Calli.

2. Q. You have been sworn to tell the truth on
this examination? A. Yes.

3. Q. You are employed by the B.C. Electric Rail-
way Company? A. Yes.

10

4. Q. In what capacity?

A. At present I am a bus operator.

5. Q. How long have you been employed by the B.C.
Electric?

A. Twenty months.

6. Q. From now?

A. April of 1948.

7. Q. That is when you started with them? A. Yes.

8. Q. And what was your first work with them?

20

A. Motorman.

9. Q. You put in a certain length of time study-
ing? A. Yes.

10. Q. When did you graduate or whatever you call
it as a motorman in your own right?

A. I had a three weeks training course.

11. Q. Can you give me a rough idea of when you
first operated a car by yourself?

A. Around May 10th, 1948.

In the Supreme
Court of
British Columbia

Plaintiff's
evidence.

No. 12

J.V. Calli,
Examination
for Discovery -
continued.

12. Q. And you continued to work as a motorman from that time up to the time of the accident we are discussing today?
- A. Yes, sir.
13. Q. And were you on part time or steady employment at that time?
- A. At the time I was on schedule.
14. Q. You mean at the time of the accident?
- A. Yes.
15. Q. How long had you been on steady employment as a motorman? 10
- A. I had been an extra for approximately a period of two months. During that time I had no regular run and on the next sign up in June it was steady employment. .i
16. Q. Sometime in June 1948? A. Yes.
17. Q. You recollect the accident we have been discussing today? A. Yes.
18. Q. What day did that occur?
- A. August 6th, 1948. 20
20. Q. Were you operating the streetcar at that time that was involved in the accident?
- A. Yes.
21. Q. As a motorman? A. Yes.
24. Q. And you were on the Fairview run?
- A. Actually it was a Robson. I made the last trip as a Fairview. I was going to the barn.
40. Q. When did you first see the auto that was eventually in the accident? 30
- A. I first noticed it as I was entering the intersection at Heather.

41. Q. It was across your track at that time?
 A. Approximately a foot away from the track to the right of the track.

In the Supreme Court of British Columbia

42. Q. Turning across the track?
 A. He seemed to be stationary there.

Plaintiff's evidence.

 No. 12

43. Q. But he might have been moving.
 A. He may have.

J.V. Calli,
 Examination for Discovery - continued.

44. Q. Did you sound your gong at that time?
 A. Yes.

10 45. Q. You realised he was close to the track and you could not get by without hitting him?
 A. Yes.

48. Q. What speed do you normally travel along that route.
 A. I don't know the exact speed, 15 to 20.

49. Q. Do you mean to say that a street car under normal running time does not travel any more than 15 to 20 miles an hour?
 A. I don't think so.

20 50. Q. Is there a speedometer or anything on the street car to indicate the speed you are travelling?
 A. No.

51. Q. So you say the normal speed that a street car travels along there would be 15 to 20 miles an hour?
 A. Yes.

52. Q. On this occasion you say you were travelling between 20 and 25 miles an hour?
 A. Yes.

30 53. Q. So you were travelling faster than the normal speed of a street car along there on that occasion.
 A. Yes.

61. Q. When the street car hit the auto, where was it?

In the Supreme
Court of
British Columbia

Plaintiff's
evidence

No. 12

J.V. Calli,
Examination
for Discovery -
continued.

- A. It seemed to be a foot away from the track, parallel to the track.
62. Q. Still in the same position you first saw it. A. Yes.
63. Q. So that your impression was from the first time you saw it until the time of the impact it had not moved? A. Yes.
71. Q. Give me the right answer, how far do you estimate your street car carried the auto after the impact? A. About 40 feet. 10
72. Q. As you were entering Heather Street you say you realised the auto was in a position where you were going to strike it, is that correct? A. Yes.
82. Q. Travelling at a speed of 20 to 25 miles with that street car in what distance can you stop the street car when you apply the brakes, full air in good condition?
- A. I don't know, it varies with conditions.
83. Q. On that particular day a dry clear day? 20
- A. I don't know.
84. Q. Do you receive any instructions during your training as to the distance in which street cars can be stopped at different speeds with the application of the brakes?
- MR. CAMERON: That is a matter of expert knowledge.
- MR. SPRING: 85. Q. I am asking if he gets any training.
- A. They touch it very lightly.
86. Q. At the time of the impact when the street car collided with the auto, what speed were you travelling at that moment? 30
- A. At the time of the impact?
87. Q. Yes. A. Practically 20 to 25.
88. Q. Had you stopped the street car at Heather and Broadway at that particular section on that particular trip to discharge passengers? A. No.

No. 13.

OPENING REMARKS OF COUNSEL

In the Supreme
Court of
British ColumbiaDefendant's
evidence.

No. 13

Opening Remarks
of Counsel.

MR. FARRIS: Gentlemen of the jury, we won't call very much evidence. I am going to call some. I will have some remarks to make at the end. I don't know that I have much to say at this time. The British Columbia Electric Railway Company is operating street cars here. It has accidents. Sometimes its employees are negligent; sometimes they are not. I think it is a fair assumption that they are not negligent all the time. There must be somebody else in this community who commits negligence sometime.

I submit very seriously that the cause of this accident was this young man turning in front of an oncoming street car. He passed it two blocks back. He didn't know whether it was going or starting. The evidence is in and there will be more evidence that his car was going twenty-five miles an hour, which was a perfectly legal rate. A street car has as much right to do that as a motor car has. It is very significant from that he has told us -- this young man says by the time he got to Heather until he got down to making his turn he slowed down to fifteen and then tapered almost to a stop. Where in the world was this street car all this time. One witness says it was going thirty-five miles an hour. I think that is absurd. I don't think the man was untruthful, but he didn't have much opportunity to judge; but taking it at 25 to 30 miles, where in the world was it. It was coming right behind him and in the discovery which I read just now the first time Calli the motorman - I wish they would train their motormen to be not only good motormen but good witnesses. Sometimes a man who is a good motorman doesn't always make the best impression in the box just because some people are born that way. But this is the point I am arguing. For the purpose of my argument I cannot accept his story that he got across on the devil strip and put his hand out and was monkeying

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 13

Opening Remarks
of Counsel -
continued.

with his hand on those levers. Nobody supports it. The logical time to put your hand out is when you start to make your turn, and that is when everybody else saw it, and my suggestion to you is that this accident happened when he started to make the turn, and I think what happened is when he started to make the turn it dawned on him -- he realised he couldn't get across, he would have to stop some place. When you come to decide the case I am going to argue a little more effectively then and point out first what alleged negligence there is against the street railway company. I suggest to you that when Calli said he didn't see the motorcar until he was just entering into Heather Street the reason is that is the first time he had any occasion to see it. There might be a thousand cars going down on his right hand side off the street car tracks. He would have no occasion to notice them after a car gets past the intersection and is going along. I am going to submit that no motor car has a right, with a street car coming behind him, to turn there. Calli had a right and saw it the first time and it registered in his mind when he saw that thing edging over in front of him. Before that it might have been there or might not have been. He wouldn't be taking notice of it so there isn't anything in that.

10

20

I suggest those are the facts. My friend said in opening that this man was not adequately trained. We are going to call some evidence on that now that the question has come up to show you what we do with these men. And he had experience. He used to drive a milk wagon in North Vancouver for a year and a half and he had experience as a truck driver. So that as far as handling machinery and traffic and things like that he had wide experience. Then he was given individual training for three weeks. Then he was driving a car for some months after. It has always proved to be satisfactory with good men.

30

40

We are going to call first a lady who wants to get away who was in the street car. We will find out what she knows about this; and I am going to call evidence about the speed of the car. And I think you can get the gist of what I am saying that this man was the author of his own wrong.

Nobody was ever hurt by a street car by waiting and going in behind it; and this motorman after all is just a working man the same as anybody else and was doing his duty. He says he put his brakes on. He says he was going 25 miles an hour. He couldn't still be going 25 miles an hour. He would be bound to slow up some place, but those things you have to make allowances for.

In the Supreme Court of British Columbia

Defendant's evidence.

No. 13

10 This young man was hurt. I don't want to make any attacks on him more than are necessary to bring out the truth in this case and I hope you won't think I have gone after him any more than is necessary by bringing to your attention what he said before.

Opening Remarks of Counsel - continued.

Mrs. Nelson will now be called.

No. 14.

No. 14

EVIDENCE OF ETHEL NELSON

Ethel Nelson. Examination.

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mrs. Nelson, where do you live?

20 A. 3744 Ontario.

Q. And I understand you were on the street car two years ago when this accident happened at Broadway and Heather?

A. Yes.

Q. Where were you going?

A. Home from work.

Q. You were working? A. That is right.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 14

Ethel Nelson,
Examination -
continued.

Q. What were you doing?

A. I was on my way home from work.

Q. What was your work?

A. In a lingerie shop on Granville.

Q. That is your usual way to go home?

A. At that time, yes.

Q. And has been for how long?

A. Three years.

Q. Whereabouts were you sitting in the street car?

A. The second seat from the front on the right hand side. 10

Q. Do you know whether there was anybody sitting in front of you?

A. No, no one in front of me.

Q. Anybody sitting alongside of you?

A. No. Subsequently I was sitting on the second seat on the righthand side by myself.

THE COURT: Reid was in the second seat on the left side.

MR. FARRIS: Perhaps that is where he would have liked to have been. 20

THE COURT: Q. Did you see him -- Mr. Reid?

A. No. I didn't.

Q. Do you see him here today?

A. No, I don't know the gentleman.

THE COURT: That is the same seat you say you were in.

MR. FARRIS: Q. There is no doubt about where you sat?

A. I know I was in the second seat.

Q. Before the accident did you form any idea of how fast the street car was going?

A. Just the normal rate of speed.

Q. Was there anything to attract your attention that there was anything out of the ordinary in any way?

A. No.

10 Q. What was the first time you heard or saw anything that suggested something might be wrong?

A. The motorman clanging the bell constantly.

Q. And where was the street car then?

A. The west side of Heather, just approaching Heather Street.

Q. When you heard the clanging, what did you do?

20 A. I leaned forward and looked out of the door, which happened to be open, into the motorman's section, and I couldn't see a thing. I was wondering what the commotion was about, and I couldn't see a thing.

Q. You were interested by that time?

A. Yes.

Q. Could you see right down Broadway right across Heather and on past Heather?

A. I couldn't say how far. I just looked out and couldn't see a thing in front of the street car.

Q. What next happened?

30 A. Then I leaned and looked out the window where I was sitting, and all I could see was the back of a car, and with that, the impact happened, and that's all there was to it.

Q. The impact happened by that time? A. Yes.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 14

Ethel Nelson,
Examination -
continued.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 14

Ethel Nelson,
Examination -
continued.

THE COURT: Q. You saw the back of a car?

A. Yes.

MR. FARRIS: Q. That was the car that was hit, I suppose?

A. Yes.

Q. THE COURT: Was that before or after the impact?

A. It seemed to be all at the same moment.

MR. FARRIS: Q. How long was it from the time you looked straight ahead until you looked out the side?

10

A. Just a matter of turning and looking out.

Q. You couldn't see anything straight ahead and you looked out the side?

A. Yes.

Q. And then you saw this car and bang?

A. Yes.

Q. Did it happen that quick, the sequence?

A. Yes, it did.

CROSS-EXAMINATION BY MR.SPRING:

Q. Mrs. Nelson, you say you were sitting alone?

A. Yes.

Q. Were you reading, by any chance?

A. No. I wasn't.

Q. What were you thinking about at the time?

A. Nothing more than getting home.

Q. And what you were going to have for dinner?

A. That's right.

10 Q. When you looked out you couldn't see a thing?

A. I couldn't see anything in our path.

Q. Did you see an automobile pass you after that time? A. No. I didn't.

Q. And would you say the motorman sounded his gong for at least half a block before the crash?

A. It was the west side of Heather, and he was still ringing to the last moment.

Q. What would you consider the normal rate of speed street cars travel?

20 A. I couldn't answer that. I don't know. All I can say is he was travelling a normal rate of speed.

Q. But you don't know what a normal rate of speed is? A. No.

MR.FARRIS: Not in miles she doesn't.

MR.SPRING: Q. I take it you only saw a fleeting glimpse of the back of the car at the time the impact occurred? A. That's right.

Q. And from the time the motorman started clanging his bell until the impact the speed of the street-car didn't appear to increase? A. No.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 14

Ethel Nelson
Cross-
Examination.

In the Supreme Court of British Columbia

Defendant's evidence.

No. 14

Ethel Nelson Cross-examination - continued.

Q. And it didn't decrease either?

A. I couldn't tell you. There didn't seem to be any change of speed. We were proceeding at the normal rate of speed at all times.

Q. Right until the crash occurred?

A. I would say so, yes.

(Witness aside)

THE COURT: I think we had better adjourn Mr. Foreman, you will remember what I said about not allowing anyone to approach you.

10

MR. FARRIS: Before you adjourn, my lord, Mr. McEachren has been taking examinations at the university. As a matter of fact he won't be long. He has to take an examination at the university tomorrow morning, and I don't think he will be very long; I think ten or fifteen minutes.

THE COURT: Would you like to have a recess for five minutes.

MR. FARRIS: Yes, my lord.

(PROCEEDINGS RESUMED AFTER SHORT RECESS).

20

No. 15

No. 15

B.A. McEachren. Examination.

EVIDENCE OF BENJAMIN ALEXANDER MCEACHREN

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mr. McEachren, I understand you are a student at the university now? A. Yes.

Q. In Science? A. Yes.

Q. Taking your engineer's course, are you? A. Yes.

Q. What year are you in? A. Fourth.

Q. You are in the midst of the examinations now?

A. Yes.

30

- | | | | |
|----|---|---------|--|
| | Q. At the time of the accident you were working for the B.C.Electric? | A. Yes. | In the Supreme Court of British Columbia |
| | Q. As a conductor? | A. Yes. | |
| | Q. And you were in your car --- you were conductor on this particular car when the accident took place at Heather and Broadway? | A. Yes. | Defendant's evidence. |
| | Q. How long had you been on that run? | | No. 15 |
| | A. I am not sure, but they go in two months sheets, and I would say about a month, I am not certain. | | B.A.McEachren Examination - continued. |
| 10 | Q. And Mr.Calli was your motorman? | A. Yes. | |
| | Q. Did you find anything wrong with his efficiency? | | |
| | A. No. | | |
| | Q. You are in charge, aren't you, as conductor? | | |
| | A. Supposedly, yes. | | |
| | Q. On this occasion how was the street car traveling as to speed? | | |
| | A. The speed wasn't excessive. | | |
| | Q. The speed was not excessive? | A. No. | |
| 20 | Q. What was the first thing that called your attention that something was wrong? | | |
| | A. I heard the motorman ring and I could tell that he throw on the brakes. | | |
| | Q. About where was the street car then? | | |
| | A. Just about opposite the west side of Heather Street. | | |
| | Q. You were going east? | A. Yes. | |
| | Q. Where were you? | | |
| | A. I was standing in the rear of the street car. | | |
| | Q. And did you see anything? | | |
| 30 | A. Yes, I looked through the front. | | |

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 15

B.A. McEachren
Examination -
continued.

Cross-
examination.

Q. What did you see?

A. I could see the car and I could see the driver's arm hanging down.

THE COURT: Q. You could see the motor car?

A. Yes, a part of it.

Q. What else?

A. The driver's arm was vertically downwards.

MR. FARRIS: Q. How close were you to it then?

A. I would say about thirty feet.

Q. The front of the street car was? A. Yes. 10

Q. The thing happened pretty quick after that?

A. Yes.

Q. Could you tell whether the motor car was moving or not?

A. It didn't move all the time I saw it.

CROSS-EXAMINATION BY MR. SPRING:

Q. What run were you on that night?

A. It was a Broadway East, and we came around as a Fairview on the last one.

THE COURT: I cannot hear you very well. 20

A. A Broadway East and we came around as a Fairview.

MR. SPRING: Q. At that particular time you were heading for the barn, is that correct?

A. That's right.

Q. That particular part of Broadway along which you were travelling just prior to the accident is on a downhill grade? A. Very slight.

Q. Where does the grade start?

A. About Spruce and ends about Cambie.

- | | | |
|----|---|---|
| | Q. So it was on a steady downgrade for how many blocks before the point of impact? | In the Supreme Court of British Columbia |
| | A. It is on a slight downgrade for about three or four blocks. | _____ |
| | Q. You say the speed wasn't excessive. What is the normal speed for a street car on that run? | Defendant's evidence. |
| | A. You mean an estimation? | _____ |
| | Q. Yes. How many miles an hour is your normal speed? | No. 15 |
| 10 | A. You have to stop about every block. You don't go much more than 15 or 20. | B.A. McEachren
Cross-examination -
continued. |
| | Q. What is your normal speed while travelling? | |
| | A. About 25 miles an hour. | |
| | Q. What speed do you think the street car was doing just prior to the motorman starting to ring his gong? | |
| | A. About 25. | |
| | Q. He was doing about 25? | A. Yes. |
| | Q. And you say that is about normal speed? | |
| | A. Well, it isn't excessive. | |
| 20 | Q. But do you say it is normal? | |
| | A. Yes, I have gone that speed before. | |
| | Q. In other words, your impression was the street car wasn't travelling greater than normal speed? | |
| | A. No, I wouldn't say it was. | |
| | Q. You say it wasn't travelling greater than the normal speed? | |
| | A. I would say the car wasn't travelling any more than 25 miles an hour, which you quite often get up to in normal operation. | |
| 30 | Q. I want to be clear on that point. You say that the speed of the car wasn't greater than normal for that run? | |
| | A. No. | |

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 15

B.A. McEachren
Cross-
examination -
continued.

MR. FARRIS: He means yes, I think.

MR. SPRING: I am not sure what you mean by "No".
Do you mean it wasn't greater than normal?

A. I mean on that run we hadn't stopped as far as I remember, at Laurel or Willow and Heather, but normally we would stop at Laurel or Willow, and consequently we might have been faster than we would normally be only because we hadn't stopped.

Q. And by normal, you mean 20 to 25 miles an hour? 10

A. Yes.

Q. You say you were supposedly in charge of the street car. What do you mean by that?

A. I am the conductor. I mean the conductor, I suppose is in charge of it, but the motorman -- each looks after his own half.

Q. In the street car business you don't interfere with one another?

A. I never try to tell him where to go, no.

Q. You say you could see the automobile driver's arm hanging out of the car vertically down? 20

A. That's right.

Q. Did you get out after this accident occurred?

A. Yes.

Q. Did you notice any other cars parked along Broadway on that side?

A. I don't recall them.

Q. You don't recall seeing a Chinese vegetable truck parked there? A. No.

Q. Or any other car? A. No. 30

Q. There might have been some parked there?

A. As far as I know, no.

MR.SPRING: That is all.

(Witness aside)

In the Supreme
Court of
British Columbia

THE COURT: We will adjourn now until what time do you suggest in the morning?

Defendant's
Evidence.

MR.SPRING: I can make it almost any time to suit your lordship.

No. 15

MR.FARRIS: Whatever suits your lordship and the jury.

B.A.McEachren
Cross-
examination -
continued.

10 THE COURT: We might as well say half past ten, so that we can get through in decent time. Will that suit you, Mr.Foreman, and members of the jury?

THE FOREMAN: Yes, my lord.

THE COURT: You will remember what I said before about not discussing the matter with anybody else outside.

(COURT ADJOURNED UNTIL 10.30 A.M. DECEMBER 13th).

Vancouver, B.C.,
December 13, 1950.

20 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT AT 11.00 A.M.)

THE COURT: Have you another witness, Mr.Farris?

MR.FARRIS: I can't let you off that easy, my lord, I have two or three.

No.16

No. 16

EVIDENCE OF JAMES VINCENT CALLI.

J.V.Calli.

DIRECT EXAMINATION BY MR.FARRIS:

Examination.

30 Q. Now, Mr.Calli, you were the motorman operating the B.C. Electric streetcar on Broadway, a couple of years ago, when the car collided with Mr. Sigurdson's car and hurt his hand? A. Yes.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 16

J. V. Calli
Examination -
continued.

Q. Now, you will have to speak up, so the jury will hear you. How old are you? A. 32.

Q. You were born, I believe, in North Vancouver, were you? A. Yes.

Q. And lived here all your life? A. Yes.

Q. And how long have you been a motorman?

A. You mean, at the time when I first started with the company?

Q. The best way to put it is, when did you become a motorman? A. May 10th. 10

Q. Of that year, 1948? A. Yes.

Q. And one of the complaints here is you didn't have enough proper training. Let us go back to before you joined the B.C. Electric. What work had you done? A. Mostly truck driving.

Q. I think you drove a milk wagon, in North Vancouver? A. Yes.

MR. SPRING: My lord, I don't mind my friend asking some leading questions.

MR. FARRIS: I won't lead on material matters. If you think I am putting any idea in his head that he wouldn't think of, you can object. He drove a milk truck. 20

THE COURT: Q. That was a horse and wagon?

A. No a truck.

MR. FARRIS: Your lordship is guilty of leading him now.

MR. SPRING: But it is in the right way, though.

THE COURT: I was trying to get him to explain his answer. 30

MR. FARRIS: Q. How long did you drive a milk wagon? It was a motor milk wagon?

A. Yes, a year and a half.

Q. Had you ever had any experience before that in driving?

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A. Yes. I drove for another dairy, previous to that.

Q. How long did you drive for them, just roughly?

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A. I don't know. Approximately about the same period.

Q. And had you had any experience before that in driving?

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A. Just driving vehicles belonging to my brother.

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Examination -
continued.

10 Q. You were able to drive motor cars?

A. Yes, I was able to drive motor cars.

Q. After you left the second dairy, what did you do then?

A. I drove for a building supply outfit in West Vancouver

Q. What did you drive there? A. A dump truck.

Q. What. A. A dump truck.

Q. A dump truck? A. Yes.

Q. How long did you do that?

20 A. Oh, approximately six months.

Q. And after that, what did you do?

A. I went up north with a dump truck belonging to my brother.

Q. And did you drive it up there? A. Yes.

Q. Whereabouts? A. At Prince George.

Q. For how long? A. Nine months.

Q. Then what did you do? You came back here?

A. I came back here.

Q. Was that when you joined the B.C. Electric?

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continued.

A. There was a slight interval of about two months, then I came to the B.C. Electric.

Q. Did you get a training from them?

A. The B.C. Electric?

Q. Yes. A. Yes.

Q. What was it?

A. For three weeks. At first, we were acquainted with the equipment.

Q. Yes?

A. And then, after we had received that --

10

MR. FARRIS: Can you hear all right, gentlemen?

THE WITNESS: After we had received that training, we went out with what they call a platform man, that is, one of the motormen.

MR. FARRIS: Q. Yes?

A. Who had volunteered to take on a student.

Q. Yes?

A. And I was with the first one for a day. I believe it was a day.

THE COURT: Q. Speak up, I cannot hear you.

20

A. I was with the first one a day.

MR. FARRIS: Q. What did you do that day?

THE COURT: Q. You went out with a platform man, as a student, for one day, is that it?

A. Yes.

MR. FARRIS: Q. That does not mean that was the only day as a student? That was the first day?

A. That was the first day.

Q. What did you do that day?

30

A. He took the controls for a period of time, then he would sit back and tell me if I did anything wrong, and then I would take them again for a longer period. But after the first day, we went out with different other platform men, to cover all the lines.

Q. That is, these platform men would be the regular motormen on these runs? A. Yes.

Q. You would go on the platform with them?

10 A. Yes.

Q. And from time to time, they would operate and tell you what they were doing? A. Yes.

Q. And at other times you would take over?

A. Other times, I would take over.

Q. All right, go on.

A. Well, that continued for, I believe, there was a week of that. I am not quite sure.

Q. Well, approximately.

20 A. Yes. Then, at the end of that period, we took out a streetcar. It was not in service, actually, but it was taken from the barn I believe.

THE COURT: What is that?

MR.FARRIS: The car was not in service, but was taken from the barn.

THE WITNESS: We were told to pick up passengers. It wasn't a regular car on a regular route.

MR.FARRIS: Q. Had they a man watching you?

A. Yes.

Q. They had an experienced man with you?

30 A. Yes, and we picked up passengers, and carried on as a normal streetcar, and we were tested according to our ability at the time.

THE COURT: Q. You were what, according to your

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ability? A. We were tested, or marked.

MR. FARRIS: Q. Yes, and you kept that up, and finally you were graduated as competent to drive, were you? A. Yes.

Q. And after three weeks you were considered competent to drive? A. Yes.

Q. In all that three week period, you were on this training work? A. Yes.

Q. What did they put you on then?

A. From then on I went on to the extra runs at that time, because I missed the sign-up period. We went on the extra runs. That is, we would take work whenever the regular personnel were sick, or otherwise couldn't take over. Then we took over. 10

Q. How long did you carry on with that?

A. Until the next sign-up, which I think was June 16th.

Q. During that time, were you working every day?

A. No, not every day. 20

Q. What periods?

A. Regular periods. During the time I might get an 8-hour run, or not.

Q. Did you get on all right? A. Yes.

Q. When the next sign-up came, you were put on regular?

A. I had the choice of going on a regular run.

Q. You were operating as a regular, when this unfortunate accident happened? A. Yes.

Q. Now, in the course of your training, were there any lectures on safety? A. Yes. 30

Q. What were you told?

A. Naturally, we were told about excessive speeding

and that was taboo, and that we should obey city laws, governing the operation of streetcars.

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Q. Let us come down to the day of the accident. You were going, so the story runs so far, east on Broadway? A. Yes.

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Q. And you passed Laurel, Willow and Heather?

A. Yes.

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Q. Did you stop at any one of those streets?

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continued.

A. I don't recall.

10 Q. Did you stop at Heather? A. No.

Q. When did you first see or notice the motor car?

A. Just as I was entering the intersection.

Q. Of what street? A. Heather.

Q. You saw it, as you were entering the intersection? What had you been directing your attention to if anything, immediately before that?

A. My attention was diverted momentarily, just looking for potential passengers.

Q. Yes. Then after that you saw this car?

20 A. After that, I saw this car.

Q. You may have seen it before, but at any rate that was the first time you recall now that you saw it? A. Yes.

Q. Where was it?

A. It seemed to be about six inches, or seemed to be about six inches to a foot from the right hand of the track.

Q. From the right hand of the track? A. My right.

Q. Well, you couldn't get by it? A. No.

30 Q. Well, could you tell whether the car was moving, or stopping, or what?

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J. V. Calli Examination - continued.

A. I thought it was moving very slowly. There seemed to be some motion there, but I don't recall exactly what it was.

Q. And what did you do?

A. I immediately put the car into --

Q. I beg your pardon?

A. I immediately applied full air, rang the gong and pulled the key.

Q. Which did you do first, or did you do them both together?

10

A. I think I put on the full air and rang the gong together.

Q. How fast do you think you were going, just before you put the brakes on?

A. Well, I estimate from 20 to 25.

Q. Between 20 to 25? A. Yes.

Q. There is a slight downgrade there, I believe?

A. Yes.

Q. And you were not able to stop the car, before you hit him? A. No.

20

Q. Were the brakes on all the time? A. Yes.

Q. Now, there is a statement here given by the Police Constable that you said -- I took it down as near as I could -- that the brakes didn't seem to be working right away. Do you recall that statement?

A. No, I don't recall that statement.

Q. What were the facts about the brakes?

A. They seemed to be all right, but it was the first time I had really thrown full air on, and it may have seemed that they didn't work.

30

THE COURT: Q. What is that again? I did not quite

get that. "I do not recall the statement to the policeman." I got that.

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A. I don't recall that statement, no.

Q. What did you say after that?

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A. Well, not having made a stop like that before, I might have assumed that the car took longer to stop.

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MR.FARRIS: Q. Than you thought it would?

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continued.

A. Yes.

10 Q. As a matter of fact, as far as you know --

THE COURT: Wait until I get this clear, now.

Q. This was the first stop of that kind that you made, is that it? A. Yes.

MR.FARRIS: Q. That is an emergency stop of that kind?

THE COURT: Q. The car took longer to stop than you thought it would. Is that what you said?

A. Yes.

THE COURT: Go ahead.

20 MR.FARRIS: Q. Was anything wrong with the brakes, as far as you know? A. Not that I know of.

MR.FARRIS: I think that covers everything.

THE COURT: Well, this other man Quinn said he made the statement too.

MR.FARRIS: Well, it is the same statement.

THE COURT: He said the brakes wouldn't hold for him.

MR.FARRIS: I took it it was another version of the same story.

30 THE COURT: I would think so.

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MR.FARRIS: I don't know that that adds anything to it.

THE COURT: No, probably not.

MR.FARRIS: Q. You don't recall making one statement or two?

A. No, I don't recall at all.

THE COURT: All right.

CROSS-EXAMINATION BY MR.SPRING:

Q. Mr.Calli, this three weeks training that you were getting, how much of that three weeks or the first part was taken up in making you acquainted with the equipment, I think that was the word you used? 10

A. The first day, I believe.

Q. Just the one day?

A. I believe it was. I am not sure on that.

Q. Then after that you say you went out with a platform man, I think you said, for approximately one week. A. Yes.

Q. And in that week you were carrying no passengers, is that the idea? 20

A. Oh no, we carried passengers. It was a regular man I was with.

Q. You carried passengers? A. Yes.

Q. How long did the actual driving instruction last?

A. Oh, I would say there was two weeks of that.

Q. Two weeks? A. Yes.

Q. And after that, you were allowed to take out a streetcar on your own? A. Yes.

Q. Now, you said something about you were tested. Who tested you? 30

A. The instructors in charge.

Q. That is, the regular motorman? A. No, no.

Q. They put on an instructor to test you?

A. Yes.

Q. And then, from then on, you were on regular work, until June, I think you said.

A. Regular, yes.

Q. In June you signed on? A. Yes, I signed on.

10 Q. Now, you said that you don't recall stopping at Laurel Street? A. No, I don't.

Q. But you might have stopped there?

A. I might have.

Q. And you don't recall stopping at Willow Street?

A. No.

Q. But you might have stopped there?

A. I might have stopped there.

Q. But you know definitely you didn't stop at Heather? A. No, I didn't stop at Heather.

20 Q. Now, you say your attention was diverted momentarily, looking for prospective passengers at Heather, is that right? A. Yes.

Q. When would you start looking for those prospective passengers?

A. Oh, about 100 feet before the actual stop.

Q. 100 feet before the intersection, and if you had seen prospective passengers there, you would have been able to stop and pick them up.

A. Yes.

30 Q. But when you looked there were no prospective passengers? A. No.

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Q. So, from then on you carried on.
Now, you say that you were ringing the gong?

A. Yes.

Q. When did you start ringing that gong?

A. Immediately I thought there could have been a collision.

Q. You were not ringing it before that? A. No.

Q. You don't normally ring it for intersections?

A. No.

Q. You could see you were not going to stop at that intersection, couldn't you? A. Yes. 10

Q. So, when you know you are going to cross an intersection without stopping, you don't ring a gong, is that correct? A. Yes.

Q. Is that considered a safe practice?

A. Well, some operators do it, and I believe that some do ring the gong at an intersection. I am not sure.

Q. You are actually supposed to ring that gong, aren't you, when you cross an intersection, without stopping? A. I don't know. 20

Q. You don't know. They never taught you that, eh, during your course of instruction?

A. I can't recall it.

Q. Anyway, you are definite that you didn't start ringing that gong until you saw the automobile encroaching on the track? A. Yes.

Q. Now, you say that you don't recall your statement to the police officer that the brakes didn't seem to hold at first? 30

A. No, I don't recall it.

Q. You won't deny you made that statement, will you? A. No, I won't.

Q. You may have made it? A. I may have, yes.

Q. What is your present occupation?

A. Bus driver in North Vancouver, for the B.C.Electric.

THE COURT: Q. What is that?

A. Bus driver in North Vancouver.

MR.FARRIS: For the B.C.Electric.

MR.SPRING: Q. How long have you been doing that?

A. Since May of 1948.

10 Q. May, 1948? A. Yes.

Q. Was that before this accident?

A. Pardon me, 1949.

Q. May, 1949? A. Yes.

Q. And were you driving a streetcar, right up to that time?

A. I was breaking in on the bus, prior to going to North Vancouver.

Q. When did you last drive a streetcar?

A. In May of 1949.

20 Q. In May of 1949? You just told me that was when you started driving a bus.

A. Well, I started driving a bus towards the end of May.

Q. Then you drove a streetcar up to the end of May, 1949? A. Yes.

Q. What was the reason for moving to North Vancouver to the bus?

A. Because I lived all my life in North Vancouver and I prefer working there.

Q. It was your idea? A. Yes.

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- Q. It wasn't the B.C. Electric? A. No.
- Q. Now, on the day of the accident, the visibility was quite good, wasn't it? A. Yes.
- Q. It was broad daylight? A. Yes, it was.
- Q. No fog? A. It was a clear day.
- Q. The streets were dry, with no rain? A. No.
- Q. So, you had no difficulty in seeing? A. No.
- Q. And from Laurel Street down --- at least, from Laurel Street there is a downgrade all the way, is there not? A. Yes. 10
- Q. There is nothing obstructing your view?
- A. No.
- Q. So, if you had looked forward sooner, you would have been able to see the automobile?
- A. If he had been there, I would, yes.
- Q. Yes. Now, after the accident, what did you do? Immediately following the accident. 15
- A. I saw that I couldn't get out the front, because the car was jammed in the door step. I went out to the back and my conductor, I believe, was assisting the man that was hurt. He was holding his hand, and I asked my conductor, I said, "Can I help you?" or something like that, I don't recall the exact words. 20
- Q. Just tell what you did. Did you not first take the names of passengers on the streetcar?
- A. No. I believe it was after I saw that the fellow was hurt -- saw that he was being looked after by the ambulance crew.
- Q. Where was that? 30
- A. The crew, apparently, was in the coffee shop.
- Q. Did you notice any other cars parked on the street, at the scene of the accident?

A. I believe there were.

Q. Did you see a Chinese vegetable truck, among others? A. I beg your pardon?

Q. Did you notice there was a Chinese vegetable truck parked there, among the other cars?

A. No, I don't recall that.

Q. You just remember there were other cars parked there? A. Yes.

10 Q. Now, when you saw this car encroaching on the track, did you notice the driver's arm out, signalling? A. Yes.

Q. Hanging straight down? A. Down, yes.

Q. That was a stop signal, was it not? A. Yes.

Q. And at this particular time, when you were proceeding along Broadway, you were going to the barns, is that not correct? A. Yes.

20 Q. Now, you were asked this morning if the automobile was moving, when you first saw it, and you replied that you thought it was moving very slowly. Now, are you sure of that?

A. No, I am not positive.

Q. You remember being examined for discovery, don't you, about a year ago by me?

A. Yes, I recall.

Q. Do you remember what you told me on that occasion, when I asked you? A. No.

30 Q. You don't remember, Question 61, my lord, and 62 and 63. This, gentlemen, is the Examination for Discovery, where this motorman was examined under oath.

THE COURT: That is already in, is it not?

MR. SPRING: Yes, I want to bring it to this witness's attention.

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Q. These are questions and answers that are down here. I want you to listen to them. At Question 61 I asked you :-

"Q: When the streetcar hit the auto, where was it?"

And your answer was:

"It seemed to be a foot away from the track, parallel to the track."

Is that what you said on that occasion?

A. Yes.

10

Q. Question 62, I asked you:

"Q: Still in the same position you first saw it?"

And your answer was: "Yes".

Is that what you said? Don't nod your head, say yes or no. A. Yes.

Q. Question 63. I asked you this:

"Q: So that your impression was from the first time you saw it until the time of the impact, it had not moved?"

And your answer was: "Yes".

20

Is that what you said, on that occasion?

A. I don't recall it, but if it is down there, I guess I did say it.

Q. So, now you have changed your story, a little bit. You say now you think it was moving.

MR.FARRIS: That is hardly a question.

MR.SPRING: Yes, that is a question.

Q. I am waiting for the answer.

A. I haven't changed my story.

30

Q. You say now you think it was moving, and a year ago you said you werenot satisfied it was moving, from the time you first saw it until you struck it.

MR.FARRIS: He didn't say "satisfied". The word was "impression".

MR.SPRING: I have the examination here.

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MR.FARRIS: I expect you state it correctly.

MR.SPRING: You are taking a long time to give me
an answer to that. Which do you think is right?

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evidence.

A. I don't recall.

Q. You just don't recall? A. No.

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Q. Now, I want to get back again to this time that
you were driving under instruction. Did you
have any accidents, during that time you were
driving under instructions?

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Cross-
examination -
continued.

10

A. Under instructions?

Q. Just answer. Don't nod your head. A. No.

Q. No accidents at all? A. No.

Q. Any time you have an accident, you have to make
a report out to the company, is that correct?

A. Yes.

Q. You started driving, without supervision, did
you say in May, or when of 1948? A. May.

20

Q. All right. During the period you were on regu-
lar work as a driver, but without supervision,
did you have any accidents?

A. When I was on the extra list? Q. Yes.

A. I think I hit a taxi cab one night, or a taxi
cab hit me, rather.

Q. You say a taxi cab hit you. A. Yes.

MR.FARRIS: My lord, if we are going into questions
of accidents, if they are going to do this to
reflect on this man's driving, then we will
have to have trials within trials.

30

THE COURT: I was wondering why you did not object.

MR.FARRIS: One doesn't like to object, it sounds
as if you are afraid of something.

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THE COURT: I do not think we can try that issue.

MR.SPRING: I am not, my lord, proposing to try the issue, but I am entitled to cross-examine this man on his ability to drive. I am alleging the B.C.Electric did not train him properly.

THE COURT: The fact he had an accident does not prove his inability to drive, because we know none of the particulars of the accident.

MR.SPRING: My lord, he has --

THE COURT: You have your answer, anyway.

10

MR.SPRING: That is what I am proposing. If your lordship wants to overrule me, I want it recorded, because I want it for credibility purposes, if not for anything else.

THE COURT: You have it.

MR.SPRING: Q. Now, Mr. Calli, what was your next accident? Was that your first accident?

MR.FARRIS: Well, I am going to object to that.

THE COURT: There is no use going into a lot of things like that. I am sustaining Mr.Farris's objection.

20

MR.SPRING: My lord, do I understand --

THE COURT: Unless you can give me some authority for that.

MR.SPRING: My lord, do I understand I cannot cross-examine this man on credibility?

THE COURT: Credibility? Oh, yes, you can examine him on credibility all you like.

MR.SPRING: Am I not entitled to ask him about accidents to show if he denies them?

30

THE COURT: What has that to do with credibility?

MR.SPRING: If he denies them, I will certainly prove them.

THE COURT: Suppose he did deny them? You cannot,

under the Evidence Act, prove them, because it has nothing to do with the case. Where is the Evidence Act? Have you it there? See what it says on that -- after giving him time and place, he denies something and it is relevant -- I forget the section. Do you remember it?

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MR. SPRING: Very good, my lord. With all due respect to your lordship's ruling --

THE COURT: You have to accept his evidence.

10 MR. SPRING: --I feel I am entitled to ask him, to
" prove whether he is a capable driver. Now, he
can deny it is his liability, if he wishes, but
I am entitled to ask that, and if your lordship
is going to overrule me, I suggest if this man
is driving so fast that my friend doesn't want
me --

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continued.

20 MR. FARRIS: My friend has no right to make any
statement like that. That is going far enough.
You said you were examining on credibility. I
try to conduct my case properly and I don't like
that.

MR. SPRING: I propose to show this man's driving
record is bad, and he has had numerous accidents,
and bad ones.

MR. FARRIS: I think these are all remarks that
should not be made, after the Court has ruled.

THE COURT: I beg your pardon?

30 MR. FARRIS: I think it is an outrageous thing to
make these statements, after the Court has ruled
on it. My friend is giving evidence now. Are
you going to try these issues and determine who
was to blame? Why does my friend make state-
ments like that in Court?

THE COURT: I have already ruled on it. You cannot
try questions of that kind here. We would never
arrive at any conclusion, unless we tried an
issue on each one of those. You say, "Credi-
bility". It has nothing to do with credibility.

40 MR. SPRING: My lord, it certainly goes to the ques-
tion of whether this man was a good driver and
had been properly trained.

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THE COURT: Why did you not bring evidence to prove it?

MR. SPRING: My lord, on cross-examination, if I cannot ask him these questions which your lordship has ruled on, of course, I am out, and I will have to let it slide, but I think I am entitled to ask him if he had accidents on certain occasions, and if he deny it, I will confront him with evidence of it.

THE COURT: Suppose he admits it?

10

MR. SPRING: Well, if he admits it, that is it.

THE COURT: That does not prove he was negligent in this case, or an incompetent driver, because he had an accident.

MR. SPRING: I might be able to prove that. He might admit it.

MR. FARRIS: There is no question about it. I happen to know about these accidents. There were two of them, and if my friend had started in on his case originally to prove this man was incompetent -- it must be done in his case, and had he proved it in his case, I would have been glad to meet him on the facts, but my friend comes now and makes these statements, for no purpose in the world except to try and influence the jury. I say, as far as credibility is concerned, there is no question about it. This man during the course of his employment, has had two accidents. How serious they are and things like that, is another matter, and I want to repeat that, because I think I have been put in a very unfair position. If he had come forward as part of his case and said, "I propose to prove that this man is an incompetent driver, because of his accidents," and had given evidence of those accidents, I would have been quite prepared to have met him -- quite prepared to have met him.

20

30

THE COURT: Mr. Spring: that is just what I said a moment ago. You could have proved those things as part of your case. Now, you are bringing out something in cross-examination and we are going to have a rebuttal trial, and the jury will have to decide two more cases, as to whether or not he drove incompetently when he had those two accidents. Now, I sustain the objection.

40

MR.FARRIS: My lord, I think you should go further and sustain my further objection, that my friend cannot go along making statements that cannot be refuted about these accidents. I cannot refute them. If he had brought them in in the proper way and we were having a trial on them, we could refute them, but my friend brings in the accidents, trying to insinuate this young man was to blame. He makes these speeches, and I cannot refute them.

10

MR.SPRING: I can put in documentary proof. I am not saying he was to blame, no.

MR.FARRIS: I think my friend should stop that.

THE COURT: As I said before, if you wanted to prove he was incompetent, and wanted to bring evidence to that effect in connection with a previous occasion, you should have done it in your own case, but you did not do it.

MR.SPRING: I allege it in my pleadings, my lord.

20 THE COURT: You did not give the evidence, though.

MR.SPRING: Very good, if your lordship rules against it.

MR.FARRIS: If he does? He has done it already.

MR.SPRING: That is very fine, then. I will let it rest at that.

My lord, I would like to ask for a ruling, as to whether I can cross-examine him on Examination for Discovery on a previous matter.

30 THE COURT: I do not know what you mean by that. You can cross-examine him on his Examination for Discovery, of course, but not on this issue.

MR.SPRING: Not in this matter? Your ruling is I cannot, on a previous Court proceeding?

THE COURT: Not on that. You can cross-examine him--

MR.SPRING: I did not quite hear you, my lord.

40

THE COURT: I have already ruled you cannot follow this line of cross-examination. I do not know what is in the Examination for Discovery. I am not supposed to know, except what is put in, and the same with the jury, as a matter of fact. It is tried on the evidence.

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Cross-
examination -
continued.

In the Supreme
Court of
British Columbia

Defendant's
evidence.

No. 16

J. V. Calli
Cross-
examination -
continued.

MR. SPRING: Q. Did you receive any further driving instructions from the B.C. Electric, after this accident? A. No.

Q. Nothing further? That is all, my lord.

THE COURT: Q. Wait a minute, until I get something clear here. Calli, I understand that when you were about 100 feet back from the Heather intersection, you looked to see if there were any passengers waiting for you. A. Yes, sir.

Q. That gave you plenty of time to stop? 10

A. If there were passengers, yes.

Q. You had been stopping, I suppose, at street intersections?

A. I don't recall from Oak Street on.

Q. You stopped? That is what you were doing, picking up passengers at the corners? A. Yes.

Q. You allowed yourself about 100 feet?

A. Yes. I say 100 feet, but it might have been more.

Q. How far was this motor car ahead of you, when you put on your brakes and sounded your gong? 20

A. Oh, about 50 feet, or so.

Q. Fifteen?

A. Fifty, when I first started to apply the air and sounded the gong.

Q. That was just as you were entering the intersection of Heather? A. Yes.

Q. Fifty feet. Where is the position on this plan? At any rate, you say you did not have time enough to stop? A. No, sir. 30

Q. If you had had 100 feet, you could have stopped.

A. Quite easily, yes.

THE COURT: All right, thank you.

(Witness aside).

No. 17

EVIDENCE OF ERIC CAMP.

In the Supreme
Court of
British Columbia

Defendant's
evidence

No. 17

Eric Camp
Examination

DIRECT EXAMINATION BY MR. FARRIS:

Q. Mr. Camp, what is your occupation?

A. Senior instructor, in charge of Vancouver City training.

Q. For the B.C. Electric Railway Company? A. Yes.

Q. How long have you held that position?

A. The last two years.

10 Q. I beg your pardon? A. The last two years.

Q. And what did you do before that?

A. I was an instructor.

Q. And how long have you been an instructor altogether? A. Five years.

Q. Yes, and before that what were you?

A. I was a motorman.

Q. For how many years?

A. I was a motorman for five years and then became an inspector.

20 Q. And you have been inspector for five years or more?

The Court: Q: Not inspector, an instructor.

A. I was motorman five years and inspector four years.

Mr. Farris: Q: Then you became an instructor?

A. Yes.

Q. Then you became senior instructor?

A. That is right.

In the Supreme
Court of
British Columbia

Defendant's
evidence

No. 17

Eric Camp
Examination -
continued.

Q. Now, Mr. Calli, I believe he went through your hands for instruction. A. That is right.

Q. In the spring of 1948? A. Yes.

Q. What is your system of instructing?

A. We usually receive the men in a group of anywhere from four to eight, and they are given class room instruction and road training instruction during the first five days with regular instructors, and then, if they are ready to go on the road, they are sent out with a regular motorman for a period of seven days training with him on the regular routes.

10

At the end of that time they come back in and are sent out to complete the other routes which they haven't been on, for the next seven days.

At the end of that time they come in and start in on the other types of equipment. We have several different types, and they receive further instruction there, both class room and on the road, and during this time they also have some other class room training, and at the end of their training they come in and are given a road test, where they are taken out by the instructor and do a trip in a regular service with an instructor rating their performance, and then they are given an oral examination and all parts of their training are reviewed with them and they sign to that effect at the end of their training.

20

30

Q. Did Mr. Calli have this course? A. Yes.

Q. And what was the decision about him and his efficiency? A. He was passed very well.

Q. Yes.

A. He was rated quite highly, as a matter of fact.

Q. Have you found in your experience that this course that you give is adequate for your men?

A. Yes. We have been using this --

Q. I beg your pardon?

A. We have found it to be satisfactory, for number of years now.

Mr. Farris: All right, thank you.

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Defendant's evidence

No. 17

Eric Camp examination - continued.

CROSS-EXAMINATION BY MR. SPRING:

Cross-examination.

Q. Mr. Camp, in your experience as an Instructor, no doubt you are aware that some students require considerably more training than others? That is correct, isn't it? A. That is right.

10 Q. And is it customary at any time to call motor-men back for further training, if they do not-

A. We wouldn't release them in the first place, if they didn't.

Q. You don't release them and take them back in again. A. We don't, no.

Q. Every one gets the same course of training?

A. Up to a certain point. It depends on the individual's performance. If he is weaker, we might keep him longer in the first part.

20 Mr. Spring: That is all.

(Witness aside.)

No. 18

No. 18

EVIDENCE OF WILLIAM H. RAINES

W.H.Raines Examination.

DIRECT EXAMINATION BY MR. FARRIS:

Q. Now, Mr. Raines, what is your position with the B.C. Electric Railway?

In the Supreme
Court of
British Columbia

Defendant's
evidence

No. 18

W.H.Raines
examination -
continued

A. Supervisor of running repairs for streetcars.

Q. And how long have you held that position?

A. Well, for a number of years. I have grown into that job. I would say 15 or 20 years.

Q. There has been some suggestion there might have been something wrong with the brakes of this car. That is two years ago. What is your system of checking the brakes?

A. We have several ways of doing it. First of all, our streetcars all come under government inspection. That is, the government tramway inspector comes around every so often and inspects all the cars, and looks at them -- whatever cars are in. He does that regularly, which they demand.

10

Then we have a system daily of inspecting every streetcar. That is carried out very rigidly. We religiously carry it out, to see every car every day has an inspection for brakes, and it is put over the pits and a man goes underneath to inspect them. If the brakes need adjusting, they are adjusted, and if they haven't run mileage enough for that, they are inspected to see they are all right for the next run, which that is signed for. The man who looks at it and inspects it signs his name for inspecting.

20

Q. If there are any accidents, I suppose the system is to report them? A. I beg your pardon?

30

Q. If accidents happen, they have to be reported?

A. Yes.

Q. I don't suppose that would add to the inspection, because you make it, you say, rigidly anyway.

A. Yes. It would be done regularly.

Q. Is there anything in the records to indicate anything wrong with the brakes of this car?

A. As far as the records go, it would be hard to say, because there has been a great transition period in the B.C. Electric for two or three years, and those records, we haven't kept track of them. The last year or so a record has been kept religiously again, but as far as two or three years ago, we wouldn't be able to find that record, I don't think.

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evidence

No. 18

W.H. Raines
examination -
continued.

10 Q. If there was anything wrong with the brakes of the car after the accident, would it be part of their duty to bring attention to it?

A. Yes, we would be very careful about that.

Q. Was anything done like that in this case?

A. We would know about it. It would be such an outstanding thing, if it was that, that we would have immediately known of it.

Q. Was there any such report made to you?

A. No, no.

20 Q. Are you familiar with this piece of street on Broadway, between Laurel and Willow and Heather?

A. Yes, I have been over it quite often.

Q. And have you made any check-up on the grade there? A. Yes. There is nearly a 2% grade there.

30 Q. Nearly 2% of a grade. Now, as part of your duties, and as part of the operation of the company, I believe you keep informed on the effective braking distance for stopping a streetcar at different speeds.

A. Yes, that is right.

Q. And on different grades. A. Yes.

Q. Are you able to tell his lordship and the gentlemen of the jury on this grade what --

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No. 18

W.H.Raines
examination -
continued.

The Court: Q. Well, "this grade". This is the 2% grade, Mr. Raines. I do not know whether we all understand what that means. I take it to mean that there is a fall of two feet in every 100 feet. A. That is right.

Mr. Farris: Q: Well, let us take it at several rates of speed. Let us take 35 miles an hour, on this grade. A. Yes.

Q. Allowing for the mental reaction of the man:

A. Yes.

10

Q. From the time the brake is on, in what distance could the car be stopped?

A. Well, we have compiled records. This is designed on equipment which is entirely Westinghouse equipment. That is, the braking equipment on this car is supposed to be the best in the world, and their figures, I think I have some of them here, for 35 miles an hour that I could quote. If he was on a 2% grade, going 35 miles an hour, he would go about 459 feet, or over ten car lengths.

20

Q. From the time he first started to put the brakes on?

A. Yes. That would account for his reaction.

The Court: Q: Is a car 45 feet long?

A. Yes, the car is about 45 feet long.

Mr. Farris: Q: All right. Now, let us drop down to, say, 25 miles an hour.

A. At 25 miles an hour, he would go about 256 feet, on a 2% grade.

30

Q. Are those absolute figures, or approximate?

A. No, these are absolute figures, compiled from Westinghouse tables at that speed and that grade and everything.

Mr. Farris: Thank you.

CROSS-EXAMINATION BY MR. SPRING:

In the Supreme
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Q. Now, what about 20 miles an hour on a 2% grade?

A. The speed -- the distance?

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evidence

Q. Yes.

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A. I haven't it, actually, on a 2% grade, but I have it for a 1% grade. At 20 miles an hour he would go 137 feet -- 137 feet.

W.H.Raines
Cross-
examination.

Q. Now, those figures, where did you take them from? Have you the pamphlet there?

10 A. No, I haven't the pamphlet here. The Government Railway Inspector has compiled these from the Westinghouse pamphlet.

Q. What equipment does that deal with?

A. This includes any air brakes.

Q. It includes any air brake? Any kind of car, no matter what the weight of that car?

A. That is, of this design of air brake equipment.

Q. What do you mean by "this design"?

A. That is a Westinghouse air brake.

20 Q. Doesn't the weight of the vehicle make a difference?

A. No. That is taken into it. That is all considered in the way they arrive at it. It shows in the table how they arrive at it.

Q. Perhaps I don't understand that. Does this equipment show it as an inter-urban tram? Would it stop an inter-urban tram in the same distance as it would stop a light streetcar?

30 A. That would be taken into consideration in this all right.

Q. I don't know that it is very clear in his lordship's mind, or the jury's, but it certainly isn't in mine.

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evidence

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W.H.Raines
cross-
examination -
continued.

A. In the Westinghouse table, they quote whether it is trains or cars, or whatever it is.

Q. What do they quote for these figures you have given us? A. I beg your pardon?

Q. What do they quote for these figures you have given us? A. This is what they quote.

Q. They quote it for what? A. For any cars.

Q. For any cars? A. Yes.

Q. Irrespective of weight?

A. That is right. Everything is taken into consideration in the table, the way they have worked it out, the distance they stop in feet, the miles per hour and the reaction time. 10

MR. FARRIS: I might make a suggestion. You might ask if there are different types of brakes for different cars of different weights.

THE WITNESS: I beg your pardon?

MR. SPRING: Q: What I am interested in, and what I would like to see is the pamphlet. You say everything is taken into consideration. How can they take the weight of the particular streetcar into consideration, if they don't know it? 20

A. I spoke to Mr. Swanson, of the Railway Department, and talked that over with him very carefully about two months ago. I suggested that to him and he said no, absolutely that was taken into consideration in this table.

Q. That is not evidence, what he said.

THE COURT: Q: Well, I do not know what that means. What did you understand it to mean? 30

A. I understand that no matter what the piece of equipment was that this took care of it in this table.

MR. SPRING: My lord, I am not going to ask any more questions of this witness.

THE COURT: Q. How much does this car weigh?

A. It weighs about 48,000 -- 47,000 lbs.

Q. Suppose it weighed 100,000 lbs; you could not stop it as quickly, with the same brakes?

MR. FARRIS: I don't think he said with the same brakes.

A. Well, I think in that case that we have so much more braking power.

THE COURT: Q: He would have different brakes?

10 A. I beg your pardon?

Q. He would have different brakes? A. Yes.

MR. FARRIS: That is what he means by saying it is taken into consideration. There is a direct ratio, between the weight of the car and the capacity of the brake.

THE WITNESS: Yes, that is right.

MR. SPRING: My friend shouldn't give evidence.

20 THE COURT: Q: The brake might be heavier? I see, that is what you mean. So, the brakes are designed to fit the car? A. Yes.

Q. And they are so designed they will stop a car in these distances? A. Yes.

Q. No matter what the car is, is that what you mean?

A. Yes, A car might weigh, say, 100,000 lbs. and might weigh 40,000 lbs., yet they arrive at 100% braking, or 90% braking, or 80% braking, whatever it is. That is, they put more levers on the brake, to suit that condition.

30 MR. SPRING: Q: Mr. Raines, what kind of a car was Calli driving on the occasion of this accident?
A. It was a streetcar.

Q. It was a streetcar, but what type of streetcar? They are all different weights.

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W.H.Raines
cross-
examination -
continued.

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W.H.Raines
cross-
examination -
continued.

A. Well, you mean -- it was a Brill streetcar, made by the Brill people.

Q. What series, or year. How old a car is it?

A. Well, actually, the car would probably be built in 1912 or 1913, but it is rebuilt so many times from that time you can't talk about the age limit, the same way with the brakes. The car is taken in and the body is completely rebuilt. This car was completely rebuilt, some time after 1938, but the brakes are overhauled during that period every 150,000 miles -- completely overhauled, and the brake rigging is daily inspected. Not only that, but we have besides that a periodic inspection, about every 1200 or 1400 miles, where it goes through the assembly line and the brake rigging is inspected to see that brake measures up and everything is in first-class condition.

10

Q. And what series of car was it? Do you know the number? A. Yes, 152.

20

MR. SPRING: That is all.

THE COURT: Q: Now, Mr. Raines, supposing the motorman is approaching an intersection and he sees a passenger and he has started to put on his brakes 100 feet back, he would not be able to stop in time, would he, going at 20 miles an hour on a 2% grade, or even on a 1% grade?

A. If he started -- if he was coming at 20 miles an hour and had his brake on 100 feet back, no, he would not be able to stop.

30

Q. When you say he could stop within 137 feet, going at 20 miles an hour on a 1% grade, that means with the brakes full on?

A. Yes. He would have started braking sooner.

Q. I mean, that means putting the brakes on hard. You say, he could stop in 137 feet, going at 20 miles an hour, on a 1% down grade? A. Yes.

Q. That is, putting the brakes full on? A. Yes.

Q. Well, now, when streetcars are coming to a stop, do they come up gradually? Do they put the brakes on by degrees?

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A. The idea is with all instruction, with Westinghouse instruction and everybody else, is to apply the brakes hard at first and then graduate them off, so that when you come to your stop, or, at least, put your --

Defendant's evidence

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W.H.Raines cross-examination - continued.

10

Q. If that is the way they do it, it would take more space than 137 feet.

A. I wouldn't be able to say that.

Q. I would think it would. I understood you just now to say you could stop a car going at 20 miles an hour on this grade of 1% in 137 feet.

A. Yes.

Q. That is as quickly as it could be done? A.Yes.

Q. That would mean with the brakes full on, I suppose?

20

A. Yes. Whether they have allowed for coming to a proper stop, or whether they come to an abrupt stop in their table, or not, I can't answer that question, but I would certainly think they allowed for it -- for them coming to a proper stop, because, that is the only stop that is logical.

Q. In an emergency they could stop a lot sooner?

A. I think they could

THE COURT: All right, thank you.

No. 19

No. 19

DISCUSSION BETWEEN COUNSEL AND THE COURT

Discussion between Counsel and the Court.

30

MR. FARRIS: That is the evidence for the Defence.

THE COURT: By the way, I should have asked the foreman of the jury whether he wanted to ask any questions. Have you any questions? With any witness, really, you have the privilege to ask questions, if you have any. Is there any rebuttal?

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Discussion
between Counsel
and the Court -
continued

MR. SPRING: No, my lord. I don't know whether my friend's case is closed or not.

THE COURT: That is your defence, Mr. Farris?

MR. FARRIS: I beg your pardon?

THE COURT: That is the defence?

MR. FARRIS: That is the defence, my lord. Do you wish me to proceed now?

THE COURT: Yes.

MR. FARRIS: My friend has called my attention to the fact that I want to put certain By-laws in 10 regulating the traffic. I tender, my lord, By-law No.2849, City of Vancouver Street & Traffic By-laws. My friend, I take it, has a copy of this?

MR. SPRING: No. Can I have a look at it?

MR. FARRIS: I ask that it be marked as an exhibit.

(BY-LAW MARKED EXHIBIT NO.11.)

MR. FARRIS: I want to put in, also, the Motor Vehicle Regulations for 1949.

(REGULATIONS MARKED EXHIBIT NO.12) 20

MR. FARRIS: Now, I think that covers everything.

THE COURT: Is there something in particular?

MR. FARRIS: Yes. I don't need to read them, but I will refer to them later. They are pleaded, the sections.

THE COURT: I noticed that.

MR. FARRIS: In the Statement of Defence. I will read them to the jury, when we get to that part of it.

(Address to the jury by Mr. Farris.) 30

MR. SPRING: My lord, I hate to interrupt my friend, but it occurred to me to speak to something I overlooked, there was a question of the Government pamphlet. You said you would admit that yesterday - the annuity table.

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British Columbia

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10 MR. FARRIS: Yes. I am glad my friend mentioned that, I haven't got going yet, so the interruption doesn't bother me. My position, my lord, is this regarding that; I don't object to my friend's method of proof, but I do take the position it is not admissible evidence, as having any bearing on this case.

Discussion
between Counsel
and the Court -
continued

THE COURT: This is on expectation of life, is it not?

MR. SPRING: No, my lord. It was a question of trying to arrive at the value of his loss in earning power, and it was a Dominion Government Annuity Table.

20 THE COURT: It may be of some help to the jury. It is rather remote. I would allow it in.

MR. SPRING: I would like to submit it as an exhibit.

THE COURT: The jury will deal with it properly. It is interesting information.

MR. FARRIS: Mr. Cameron has gone away with it. That is one way of keeping it out, my lord. It may be in my bag, in the barristers' room.

MR. SPRING: As long as I can put it in, all right.

30 MR. FARRIS: Yes, we can take it as in, and we will pick it up somewhere.

MR. SPRING: Yes, thank you.

MR. FARRIS: Is that all now?

THE COURT: Excuse me, Mr. Farris, I seem to be interrupting a lot, but the Registrar suggests perhaps the jury would like a five minute recess.

(PROCEEDINGS RESUMED AFTER A SHORT RECESS.)

In the Supreme
Court of
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No. 19

Discussion
between Counsel
and the Court.
continued

MR. SPRING: My lord, this pamphlet is not the one I had, but it is one that Mr. Cameron has produced and it is satisfactory to me. I would like to put it in as Exhibit 13, a Canadian Government Annuity pamphlet.

(PAMPHLET MARKED EXHIBIT No. 13.)

(Address to the jury by Mr. Farris.)

THE COURT: Well, I think, gentlemen, we will adjourn at this point. At least, I will excuse the jury. I want to speak to counsel about a matter. You may retire. Mr. Foreman and gentlemen of the jury, and, as I said yesterday don't allow anyone to approach you. 10

MR. FARRIS: Are they going to retire now until after lunch?

THE COURT: Yes, or adjourn for lunch.

MR. FARRIS: They won't have to come back until after lunch?

THE COURT: No. Do not discuss this case with any outsider, gentlemen, or allow anyone to approach you. You may now retire. I want to speak to counsel about a matter, though. 20

MR. FARRIS: We both know what the matter is.

(JURY EXCUSED.)

THE COURT: This is about the questions. Has anybody drafted any questions?

MR. FARRIS: I told my learned friend I didn't think in this case, which is simple, that I was particularly interested in whether we had questions or not. 30

THE COURT: What do you say about it?

MR. SPRING: I think the matter has become complicated enough that the jury will be very confused without questions.

THE COURT: Will you prepare what you think should be put, or have you drafted them?

MR. SPRING: I have prepared a rough draft, but my friend has not seen it.

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Discussion
between Counsel
and the Court -
continued

MR. FARRIS: I spoke to my friend this morning about it. If questions are going to be submitted, they should be prepared and agreed upon, before the questions are put to the jury. My friend spoke to me this morning about it, and I said I wasn't interested in questions, and he agreed with me, and I thought that was the end of it. Otherwise, they should be properly prepared.

10

THE COURT: It will be after your address, anyhow.

MR. FARRIS: As I say, I think there shouldn't be questions.

THE COURT: Is anyone suggesting there should be any questions on ultimate negligence?

MR. SPRING: Yes, my lord. We have pleaded that and certainly we want that matter brought in. I certainly don't want to be in the position of taking any advantage of my learned friend and I would suggest this, in my address to the jury I will make no reference to questions whatever, and if your lordship wishes to deal with the matter of questions and submit them to the jury after my address, all right. I don't wish to be in a position of taking any advantage of my friend on the matter.

20

THE COURT: The first question could be, I suppose, "Was the motorman guilty of negligence, which contributed to the accident?" The second question could be, "If so, of what did such negligence consist?". The third question, "Was the plaintiff guilty of negligence, which contributed to the accident?" The fourth question, "If so, of what did such negligence consist?".

30

Then the next question, "If both the plaintiff and the motorman were guilty of negligence, which contributed to the accident, in what percentage did the negligence of each contribute?"

40

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Discussion
between Counsel
and the Court.
continued

Then put, "Motorman's percentage," and
"Plaintiff's percentage," and "damages" and
"general damages" and "special damages".

Now, do you want another question?

MR. SPRING: Yes, my lord. I might also make a
suggestion here, my lord, whether it should be
the motorman or the company. They could hard-
ly -- if the jury should find they considered
this vehicle had been sent out with defective
brakes, it would involve the company. 10

THE COURT: I will say the company, then -- the
motorman or the company.

MR. FARRIS: That is all right.

THE COURT: What other questions would you want me
to submit?

MR. SPRING: Well, I would submit a question regard-
less of the degree of fault -- I am sorry, the
question I was thinking of is: "If the plaintiff
Sigurdson was guilty of any negligence, could
the defendant company and/or the defendant 20
company's servant Calli, by the exercise of rea-
sonable care, have avoided the accident, despite
any negligence of Sigurdson.

MR. FARRIS: Of course, if you put that question,
you will have to put the reversible one. I
object to those questions, in this case, because
there is no evidence to justify them, and I call
your lordship's attention to two cases, one in
the Court of Appeal of this province and the 30
other in a recent decision about which there
has been a good deal of comment amongst judges
and lawyers, Davies v. Swan.

THE COURT: Yes, I have it here. What is the other
one?

MR. FARRIS: The other one is the Whitehead case.

THE COURT: That was the chap who went over the
ferry slip.

MR. FARRIS: Yes, my lord. My late friend Mr. R.L. Maitland was against me on that case. He won, but I thought wrongly, as far as the Court of Appeal was concerned.

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No. 19

Discussion
between Counsel
and the Court -
continued

THE COURT: What is the reference?

MR. FARRIS: (1939) 1 Western Weekly, page 369.

THE COURT: What is the decision in that case?

MR. FARRIS: I beg your pardon?

10 THE COURT: What did they decide, in the Whitehead case? It was in our Court of Appeal, was it not?

MR. FARRIS: I argued very strongly in the Court of Appeal that there was ultimate negligence there. This unfortunate man, Whitehead, drove on to a pier at night and it wasn't properly guarded or lighted, the jury found, and they found he was negligent and that the defendant was negligent, and my argument was that would constitute ultimate negligence, because he had the last opportunity to avoid.

20

If you look at Mr. Justice M.A. Macdonald's judgment, which is a long judgment, and I don't need to read it all -- his judgment begins at 373 and over around page 380 he discusses the Gillingham case. Now, the Gillingham case was in the Supreme Court of Canada, and the facts were these --

30 THE COURT: Give me the reference to the Gillingham case, will you? Well, never mind, if you haven't it there.

MR. FARRIS: Well, Mr. Justice Macdonald refers to it at page 308. That was in the Supreme Court of Canada, and here is what happened there; a janitor was going around a building in the evening, after office hours, going up and cleaning up the floors and running an elevator up to, say, the fifth floor. He left the door of the elevator open and stopped it there and then went over and gathered up a bundle of loose papers, or things of some kind, but it was a bundle that

40

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Discussion
between Counsel
and the Court -
continued

when he carried it it kind of shut off his view, and he came back to get in the elevator and the elevator mechanism was defective and when he got there the elevator had gone up to another floor and wasn't there, and he walked into the elevator shaft and fell and was killed, or seriously injured, anyway. He was found guilty of negligence and the company was found guilty of negligence, that is the defendant owner of the building, and the argument was made that his negligence was ultimate negligence, as it clearly was under the old law, and the Supreme Court of Canada held under the Ontario Contributory Negligence Act that there was no question of ultimate negligence. 10

THE COURT: Did they apply that in the Whitehead case?

MR. FARRIS: They followed that.

THE COURT: Now, in the Davies v. Swan case, this is a statement by Lord Evershed -- I have the Times Law Reports here. 20

MR. FARRIS: Have you the King's Bench?

THE COURT: This is in the Court of Appeal, in the Times Law Reports.

MR. FARRIS: I have it in the King's Bench. The page will be probably different.

THE COURT: Yes. At page 278, he says, in effect, the last opportunity rule suffered a demise, independently altogether of the Law Reform (Contributory Negligence) at 1945, and the rule in Davies v. Mann, which was not affected by the Act of 1945, did not arise for decision in the present case. The point is, he says the last opportunity rule suffered a demise. That is just a comment, in the course of the argument. Is there any statement in the judgment to that effect? 30

MR. SPRING: My lord, I would refer you to a recent Alberta case of the Supreme Court.

THE COURT: Let us get this one settled first. Is there anything in the judgments to that effect?

MR. FARRIS: Oh, yes, my lord. I am reading from 1949, Vo. 2 of the King's Bench Division of the Law Reports at page 318.

THE COURT: Whose judgment is it?

MR. FARRIS: It is Lord Evershed's, and I also read from Bucknill's judgment, or will in a minute, but this is what Lord Evershed said:

10 "As regards the so-called 'last opportunity' rule, that, as I have indicated, seems to be something different, if I have apprehended it correctly, from the rule in Davies v. Mann. In the 'last opportunity' type of case the original negligent actor has not become functus officio but still, it is said, the other party has or had an opportunity of avoiding the collision. Now that as a doctrine I venture to think has suffered a demise independently altogether of the Act of 1945. I need not refer again to the passage in Lord Simon's opinion in the Boy Andrew case (2) which Bucknill, L.J. has already cited. No doubt, in practice, such a rule was found useful by judges who were anxious in the interests of justice to avoid coming to a conclusion wholly adverse to a plaintiff merely because, at the material time, the plaintiff was still a negligent actor to some perhaps quite trivial extent. Now the Law Reform (Contributory Negligence) Act, 1945, has rendered it no longer necessary to resort to devices of that kind."

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THE COURT: The wording in your report is different from mine. In the last sentence, it reads here: "... rendered resort to devices of that kind necessary." It is a little different wording.

40 MR. FARRIS: Then Lord Justice Bucknill has the same view, and he quotes at some length from the Boy Andrew case and the decision of Lord Simon's, and at page 311 he discusses the Eurymedon case and Davies and Mann.

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Discussion
between Counsel
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continued.

THE COURT: Just read a bit of it.

MR. FARRIS: Let me give you page 312 of Lord Justice Bucknill, about one-third of the way down on that page:

"The Boy Andrew was the case (not altogether unlike this) in which a ship was overtaking another ship on the starboard side, dangerously close."

Your lordship will remember the facts of the Davies and Swan case.

10

THE COURT: Oh, yes.

MR. FARRIS: It was the overtaking car that hit the workman that was standing on the running board of the van that was right ahead of him.

THE COURT: Wait until I get the Boy Andrew.

MR. FARRIS: The Boy Andrew was a case in which a ship was overtaking. Quite a ways along in Lord Bucknill's judgment it is referred to, nine or ten pages along.

THE COURT: I have it here, the Boy Andrew.

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MR. FARRIS: "The Boy Andrew was a case (not unlike this) in which a ship was overtaking another ship on the starboard side, dangerously close. Whilst one ship was in the process of overtaking the other, the overtaken vessel negligently allowed herself to fall off to starboard, with the result that there was a collision. Each side said that the other was solely to blame, but the House of Lords came to the conclusion that both vessels were to blame -- and, on this aspect of the case, Lord Simon said, 'The suggested test of "last opportunity" seems to me inaptly phrased and likely in some cases to lead to error, as the Law Revision Committee said in their report: "In truth, there is no such rule -- the question, as in all questions of liability for a tortious act, is not, who had the last opportunity of avoiding the mischief, but whose act caused the wrong?" In Davies v. Mann the negligence of the absent donkey-owner, serious

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as it was, created a static position, where nothing that he could do when collision threatened would have avoided the result, whereas the negligence of the driver of the vehicle continued right up to the moment when the collision became inevitable."

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continued.

THE COURT: That is what you say about this man?

MR. FARRIS: Yes, my lord.

10 Then, of course, there is the case your lordship is familiar with, cited here again, the "Volute" case, and the famous judgment of Lord Birkenhead.

THE COURT: That is the Volute case.

MR. FARRIS: Yes. Then, in addition to that there is the other case where a motor cycle and something came together and the Court said, "You are not going to split hairs on time."

THE COURT: The Gillingham case, have you the reference to that? What year was that?

20 MR. FARRIS: Well, it was prior to 1937, because it was cited in 1937. I will see if I can find it.

THE COURT: Does the Supreme Court of Canada take a different view?

MR. FARRIS: Here is the reference --

THE COURT: To Davies and Swan.

MR. FARRIS: Davies v. Swan? As far as I know, it has never been up.

30 Here is the case of Greisman v. Gillingham (1934) S.C.R., page 375. I have reason to remember that case very much, because, it was on the strength of that case that I lost the Whitehead case.

THE COURT: What is the case you have, Mr. Spring?

MR. SPRING: I was going to point out that the case my friend is relying on, the House of Lords

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continued.

case, that has not been dealt with in Canada and, to my knowledge, there is still followed in Canada the last chance rule. *Maltais v. C.P.R.*, (1950) 2 W.W.R. at page 145. This is quite a long judgment, but the headnote on it, I think, covers the point I am making. It says:

"Where although the plaintiff was negligent the accident would not have occurred if the defendant had not been negligent and his negligence was so clearly subsequent to and independent of that of the plaintiff as not to be contemporaneous therewith, the defendant should be held solely responsible for the accident."

10

They followed the old *Loach v. B.C. Electric Railway* case in that, and there is a very long discussion on it.

THE COURT: That *Loach* and *B.C. Electric* case has always given me a headache. I happened to be in it. Do they discuss the *Davies* and *Swan* judgment?

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MR. SPRING: I was trying to whip through it, but I don't see any reference to it.

MR. FARRIS: That is a single judge's judgment.

MR. SPRING: Yes, the Supreme Court of Alberta. It hasn't gone to a higher court.

THE COURT: My view of this thing is this -- the jury is not here and they have to decide it, but my view is that the question is first this; they may very well arrive at the conclusion that the plaintiff was negligent. Of course, if they do not and they find the defendant the main cause of the accident, then that is the end of it, but they may very well find that the plaintiff was negligent.

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Now, he is out there in the middle of the road and the motorman saw him there, and he should have stopped, but he didn't stop. If he could have stopped, then he was guilty of negligence in not stopping and avoiding him. It is *Davies v. Mann* all over again.

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MR. FARRIS: My lord, the question and the whole issue there is whether he should have seen him in the position he was in.

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continued.

10 THE COURT: Well, of course. I am eliminating all that and saying that is the point which the jury have to decide. I do not think it is a question of ultimate negligence. I do not think there is anything ultimate about it. If that is so, that the jury find that the motorman was negligent because he did not stop, then that was the proximate cause of the accident and the defendant is liable.

MR. FARRIS: Under this Davies & Swan case?

THE COURT: Davies v. Mann.

MR. SPRING: My position is this; this is a case where the plaintiff had himself in a position of danger.

THE COURT: Yes.

20 MR. SPRING: Now, I say, of course, or contend he did not do it negligently. He took precautions but the point is he had himself in a position of danger.

THE COURT: Suppose, for the purpose of argument, he was negligent, there he was.

MR. SPRING: Once he was there, it is the old Loach case again. The motorman has the chance to avoid him.

30 THE COURT: It is the old donkey case over again. He is the donkey and the streetcar comes along and knocks him down.

MR. FARRIS: No, there is a lot more to the donkey case than that. It was discussed in Davies v. Swan, the donkey case, on the basis that the driver of the horse knew the donkey was there.

MR. SPRING: I object to my client being referred to as a donkey here.

THE COURT: Well, I can tell you in the donkey case he is not a donkey. He is not called a donkey. He is called an ass, if that helps you.

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continued.

MR. SPRING: My feeling is --

THE COURT: Does that help you any?

MR. SPRING: Not a bit, my lord.

THE COURT: Here it is. The judge simply told the jury the mere fact of negligence on the part of the plaintiff in leaving his donkey on the public highway was no answer, unless leaving the donkey there was the immediate cause of the accident (reading).

MR. FARRIS: Yes, my lord, but you must remember that in the case of this motorcycle it was not tethered and it was not stopped. It was in full running order. That is a very different thing from the donkey case. There the donkey was tethered and the man was gone, but this man on the motorcycle was sitting at the wheel with a fully running vehicle. The whole modern tendency to view the law is that where two incidents are inseparably bound up, the Davies v. Mann case no application whatever. I think Lord Bucknill refers to that. 10 20

MR. SPRING: My feeling is that if the question of ultimate negligence is not put to the jury -- of course, it might be covered in your lordship's charge, but unless the jury understand or are made fully aware of the fact that the mere placing of the car in a position of danger does not necessarily require them to find him a percentage liable --

THE COURT: I do not think there is any need for ultimate negligence. If the jury so find, then you are entitled to recover. 30

MR. FARRIS: Just for general information, I would like to read one paragraph more in this judgment of Lord Bucknill, because, it has relation to what your lordship said about Davies v. Mann.

THE COURT: By the way, the ass was tethered by forefeet.

MR. FARRIS: And the owner of the ass had gone.

THE COURT: He left him there, so he could not
move.

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MR. FARRIS: This is what Lord Justice Bucknill says
at 311:

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"Evershed, L.J., has drawn my attention to
a note in the Law Quarterly Review of Oct-
ober, 1938, on the case of The Eurymedon
and rule 1 of the five rules which Greer,
L.J. said arose out of the Davies and Mann
principles:" -

Discussion
between Counsel
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continued.

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THE COURT: Whose judgment is this?

MR. FARRIS: Bucknill's. This is just a page on
from where I was reading.

THE COURT: Yes.

MR. FARRIS: I think I should begin a little ear-
lier in the paragraph.

"It is also clear from the judgment of
Greer, L.J. in the Eurymedon. That was a
case of a collision between two ships.
Greer L.J., in his judgment, said: 'I think
the law arising out of what is usually
called the Davies v. Mann principle may be
stated as follows: If, as I think was the
case in Davies v. Mann, one of the parties
in a common law action actually knows from
observation' -- and here is the distinction
-- "actually knows from observation the
negligence of the other party" --

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Then you could tell the jury, or the jury would
find that Calli, if he knew of the predicament,
had failed to put on his brakes or stop, then
there would be a comparison with Davies v. Mann.

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"'If, as I think was the case in Davies v.
Mann, one of the parties in a common law
action actually knows from observation the
negligence of the other party, he is sole-
ly responsible if he fails to exercise re-
asonable care towards the negligent
plaintiff." Evershed, L.J. as drawn my

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attention to a note in the Law Quarterly Review of October, 1938, on the case of The Eurymedon, and rule 1, of the five rules which Greer, L.J. said arose out of the Davies v. Mann principles: 'If, as I think was the case in Davies v. Mann, one of the parties in a common law action actually knows from observation the negligence of the other party, he is solely responsible if he fails to exercise reasonable care towards the negligent plaintiff.' 10

Here, if Calli had seen this man in a helpless position, and that he was clearly stopped and if he did not get out of his road and he did not stop, he would be negligent.

THE COURT: That is what I am saying.

MR. FARRIS: No, no, my lord, I understood your lordship to say --

THE COURT: You misunderstood me, then.

MR. FARRIS: I understood you to say, and if I am wrong I apologize -- 20

THE COURT: You do not need to apologize, because my language probably was not clear, but I thought I made it clear my view was that as soon as he saw that this car was there --

MR. FARRIS: Yes.

THE COURT: -- he could not run over it, no more than he could run over the donkey.

MR. FARRIS: I agree with that. I do not dispute that, but I say there is no evidence of it. 30

THE COURT: That is for the jury to say.

MR. FARRIS: It is not for the jury to say, if there is no evidence.

THE COURT: Well, we will adjourn now until 2.30.

MR. SPRING: My lord, for the record, you are ruling against the question of ultimate negligence?

THE COURT: Yes.

(PROCEEDINGS ADJOURNED UNTIL 2.30 P.M.)

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CHARGE TO JURY BY WOOD. J.

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Charge to Jury
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THE COURT: Members of the Jury, this, as you know, is an action in which damages are claimed because of the alleged negligence of the defendant company, or its motorman; and it is very appropriate that actions of this kind should be tried by a judge and jury. I have in mind particularly the jury because in these cases the jury has the labouring oar, as it were. A jury's responsibility is a heavy one. I have before me a book which has recently been published by Sir Patrick Hastings that I would like to refer to. Sir Patrick Hastings was a leader of the English Bar. He was an attorney-general, and he is now retired. Counsel have made some comment upon the importance of juries in our system of jurisprudence, and it is rather interesting to read what a man of Sir Patrick Hastings' standing and experience has to say because he had a very wide experience in the common law courts in England in jury trials. He says at page 128:-

"An English jury is seldom, if ever wrong. In my opinion twelve ordinary Englishmen and women sitting together form the best tribunal that the world has ever known."

And I suppose that would be good for Canadians as well as Englishmen.

Then again he says at page 107:

"An English jury is the foundation stone of English justice. The ordinary jurymen know nothing of Law, and is not very greatly concerned with the stricter rules of evidence, but he possesses a positive genius for arriving at the truth -- possibly because no lawyer is ever required to sit upon a jury. After a not inconsiderable experience, I cannot personally remember one single instance in which a jury have been wrong; I have often been annoyed at their verdict" -- apparently he had lost sometimes -- "and may have recognised it as one which no lawyer could have given, but on thinking the matter over at a

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later date, I have invariably come to the conclusion that they were right. I have often thought it would be an excellent innovation if budding advocates were required to undergo a course of sitting upon juries as part of their legal education, so that they might acquire some knowledge as to the working of a juryman's mind".

That is just by the way. It is rather interesting. 10

Now, as I say, on a trial of this kind the jury has the more important function to perform. A judge must direct a jury on the law applicable and on the law generally, and of course you must accept the judge's direction on the law, but all questions of fact are for you as jurymen to decide and not only the facts but all the inferences which are to be drawn from the facts which you find to be proven. If I go wrong on the law there is a court to put me right, but a jury's finding of fact is very difficult indeed to displace, and that question of fact is your prerogative entirely; I have nothing to do with it whatever. And of course you may among you find there is a difference of opinion about those facts as you come to discuss the matter in the jury room, but probably you will find in the final analysis that there will be an agreement among you after consultation and consideration, and also with regard to the inferences which should be drawn from those facts. You have to assess the evidence and arrive at your own conclusions on that. 20 30

You will remember the demeanour of the witnesses and all that sort of thing, and decide what evidence you credit and what you do not credit. You will remember the demeanour of the witnesses and whether they seem to you to be trying to tell the truth, and perhaps more important, their powers of observations. I don't know that anybody would suggest that any of the witnesses here had been deliberately perjuring themselves, but there is a difference in evidence, no doubt that, in some respects, and you have to decide what to accept; not necessarily use the word, "believe" but what you accept as the facts. 40

You may accept the whole of the evidence of a certain witness or a part of it. If you think he has been discredited you may disbelieve all his evidence unless it has been corroborated by some evidence you find to be credible.

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10 Of course you have in mind always the interest of witnesses. Some witnesses we have had here have an interest in your verdict; some perhaps have not; but in dealing with it try to deal with the evidence as a whole, not pick out little bits and pieces, but the whole of the evidence and have regard to all the circumstances, and I am sure you will be able to arrive at a proper conclusion.

20 I may make some comment on the evidence, and counsel have commented on the evidence, but it is not what I say about the evidence nor what counsel say about the evidence that governs, but it is your view of the evidence, it is your recollection of what the evidence was that must govern, and your conclusions as to the facts, and as I said, the inferences to be drawn from those facts which have been established to your satisfaction. That is all for you.

If any remarks of mine assist you they will have served their purpose, but if I say something with regard to the evidence that you do not agree with, just ignore it. No judge will be annoyed on that account, because it is merely his duty to try to assist you.

30 In cases of this kind it is not surprising that there is some inconsistency in the evidence that has been given. This occurred over to years ago, and these accidents happen very quickly, and we expect that where several people see an accident there is a difference among them as to what they saw. They actually saw the same thing in an accident, but they all did not perceive the same thing. You have no doubt found that in the ordinary course of life; but you will do your best to resolve all these inconsistencies. That does not mean any witnesses are stating something they do not believe to be true.

40 Before going beyond that general statement, possibly I could deal with this question of damages,

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because counsel have dealt with it first. I am going to submit a few simple questions to you to be answered, and I would like you to answer them, and I would also like you to fix the damages, no matter what the answers to the questions are, so that if the case went further, we would have the benefit of your views as to what the damages should be. So I would suggest that you decide what the damages should be; that is, not what somebody is to pay, but what is a fair recompense to this young man for the injuries he sustained, regardless of whether anybody is going to pay them.

10

To start with the special damages you can take all these bills with you. There are some things that were claimed and proved and not disputed that are not in these bills.

Mr. Cameron: If I may interrupt, my lord, we have agreed to the special damages of \$1,086.15.

The Court: I have written that amount in. That is the special damages. But there are two kinds of damages: special and general. You do not need to worry about that. Just put down \$1688.55 on your finding opposite "special damages".

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The question of general damages is a very difficult one. It is very difficult for you to decide and it is very difficult for a judge to help you on it. I may say first that it is not a question of sentiment -- that should be excluded from your consideration -- nor a question of ability to pay because the plaintiff is entitled to the same amount of damages for the same injuries whether he may be suing an impecunious individual or a wealthy corporation. That does not enter into it. If an individual happens to be impecunious he may have difficulty collecting. He may have difficulty collecting from a corporation if it becomes bankrupt. But do not let that affect your conclusion on that because we should have some uniformity about these things, although that is very hard to arrive at. It does not matter whether his negligence is a great negligence or a slight negligence; damages are the same. Damages are not punitive and they cannot be perfect.

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You are to allow damages not only for actual pecuniary loss occasioned by the injuries, but also

for pain and suffering of the plaintiff and the diminution of his capacity for the enjoyment of life as well as in respect of the probable diminution of his earning capacity; the probability that but for the injury the plaintiff might have earned an increasing income. That is to be taken into account. As I say, they are not readily assessible, but one thing you can take into account is the loss of earnings over the past or the future. You will remember that this young man stated he had been out of work for a time and that his loss in that respect was \$2300 and you will recall the evidence of course -- it has been stressed by his counsel-- as to his inability to earn as much as he could before; he cannot earn the same money at that occupation because he cannot follow that occupation. That is to be taken into account. In doing so you will remember the uncertainties of life and the possibility of illness, accident and loss of employment for economic or other causes. It does not follow that he would always be able to work as a millwright nor that he could hold a job as a millwright or that the job would be available. You will of course keep in mind his age and expectancy of life. He is a young man; and of course there is this permanent disability which affects not only his earning capacity but also his enjoyment of life. He is entitled to something for that. Those things must be taken into account, his pain and suffering is to be taken into account, but adequate compensation can seldom be given. Adequacy, therefore, is not the test. The amount must be fair and reasonable, rather than adequate. I cannot give you any better guide than that. The responsibility of assessing the damages, in assigning what is reasonable damages, is a matter entirely for the jury to determine.

Now this, as I was saying, is an action for negligence, and I should say something about negligence. It is a breach of a duty owing by one to another. It is alleged here to be the breach of the duty owed by the defendant to the plaintiff, a breach of a duty which is recognised by law, and in order to recover it must be proved that there was such a breach, and further, that the injury to the plaintiff is a direct result of such a breach of duty.

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continued

Negligence is the omission to do something in the circumstances which a reasonable man would do. It is the absence of reasonable care under all the circumstances. And of course, the plaintiff himself is required to exercise reasonable care. With regard to the plaintiff it is sufficient to show lack of reasonable care for his own safety, aside altogether from the question of lack of care for the safety of others. He should use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in the same circumstances. If he fails to do so his rights are impaired; he may be unable to recover all that he would otherwise recover. Assuming, however, if he is guilty of negligence that that negligence was a contributing cause of the accident -- because it does not make a bit of difference how negligent some one is if it had nothing to do with the accident. For instance it might be that there are no brakes at all on the plaintiff's car. That would not have any bearing on it if it has nothing to do with the accident. Driving a car without brakes would be negligence but if it wasn't one of the things which caused the accident we would not be concerned with it; it would not affect the matter one way or another.

Now, the plaintiff has set out in his statement of claim, which has been referred to a number of times, several grounds of negligence, a whole page of them, but I do not think I need read those to you, because in his address to you the plaintiff's counsel has succinctly set out the grounds of negligence upon which he relies. The first one is that the motorman failed to maintain a proper lookout. The second one is that he did not put on his brakes or the brakes failed. Now I suppose what he means by the brakes failing is there must have been something the matter with them, but there seems to be no evidence of that. So that I think it comes down to this, that he did not put on his brakes when he should have.

The third ground is that the motorman was not properly trained; and of course as I said before if the lack of training was not the cause of the accident it would not make any difference.

In order to find negligence in this case you must find that the negligence was one of the things which contributed to the accident.

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The first question is this:

"Was the motorman or the Defendant company guilty of negligence which contributed to the accident?"

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continued.

The second question is:

"If so, of what did such negligence consist?"

10 Now the next question for you is whether or not the plaintiff was guilty of negligence which contributed to the accident, and if so, of what did such negligence consist?

20 The defendant says with regard to that that the action of the plaintiff absolves the motorman and the company because of his basic fault in turning in the middle of the block knowing that the streetcar was coming down that grade and that he did that contrary to the law, contrary to the regulations, the city by-law and the other regulations, which I will refer to directly. That is the first things the defendant says -- that he turned there knowing that that car was coming down the grade behind him.

The second thing is that he took chances with the knowledge that he could not get across. The streetcar had stopped and there was the traffic coming in the other way. You have heard all the evidence on that.

30 In their Statement of Defence, the company says that: "He attempted to turn from one side of the street to the other, at a place other than at an intersection or street end, without observing that such a manoeuvre could not be made in safety, thereby violating Section 41 of the City of Vancouver Street and Traffic By-law No. 2849."

Those by-laws are here. Section 41 says:

40 "No driver of a vehicle shall drive such vehicle from one side of a street to the other at any place other than at an intersection or

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street end, unless such driver shall have first ascertained that such movement can be made without obstructing traffic and can be made in safety having regard to the nature, condition, and use of the roadway, and the traffic which actually is at the time or might reasonably be expected to be on the highway."

You had better take these with you, Mr. Foreman.

The other regulation that was referred to is in the regulations pursuant to the Motor Vehicles Act Page 16, Section 3 (j): "Before turning, stopping, or changing the course on the highway of any motor-vehicle, and before turning such vehicle when starting the same, it shall be the duty of the operator thereof first to ascertain whether there is sufficient space for such movement to be made in safety, and the operator shall give a signal plainly visible to the operators of other vehicles of his intention to turn, stop, or change his course." 10 20

And so on.

That is referred to in the Statement of Claim also.

There is another clause here referred to besides the one I have read in the By-law, Number 33 (1). I have marked these in red so that you can easily see them

"The driver of any vehicle while proceeding upon any streetcar track in front of any streetcar upon any street shall forthwith remove such vehicle from such tracks as soon as practical" - 30

Mr. Farris: I think it is sub section 2 my lord.

The Court: Sub section 2.

"When a streetcar has commenced to cross an intersection, no driver of any vehicle shall drive such vehicle upon, along, or across the car tracks within such intersection immediately in front of such streetcar."

I do not think that has much to do with it.

Then reference is made to the Consolidated Railway Company's Act, of 1896, which you have heard read, which gives a streetcar the right of way. So it is said in their pleading that "he obstructed the use of the railway track by the streetcar and failed to yield the right of way."

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Then again it is said further in their defence:

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10 "He suddenly turned his automobile from one traffic lane to another immediately in front of a moving streetcar without observing that such a manoeuvre could not be made in safety!"

There are some other things mentioned here which have not been stressed. He failed to keep a proper look-out or any look-out -- those are the things it is alleged by the defendant that the plaintiff was guilty of.

20 Now, any person alleging such a thing must prove it by a preponderance of evidence, not beyond a reasonable doubt as in a criminal case, but the plaintiff on his part must prove by a preponderance of evidence that the defendant or the motorman was guilty of negligence, and by the same token if you find that the plaintiff was guilty of negligence, you must do so by a preponderance of evidence.

30 I have told you what the first four questions are. The final question is "If both the Plaintiff and the Defendant were guilty of negligence which contributed to the accident, in what percentage did the negligence of each contribute?"

When I say the "Defendant" I mean the company is responsible for the motorman; it is either the Defendant or its motorman. I stress that again,

"If both the Plaintiff and the Defendant were guilty of negligence which contributed to the accident, in what percentage did the negligence of each contribute?"

40 The reason why that is necessary is because of what is known as the Contributory Negligence Act. Prior to the passing of this act, a man in this

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position, no matter how badly he was hurt and no matter how negligent the defendant was, could not recover anything if it was established that he was guilty of any negligence whatever which contributed in the smallest degree to his injuries. And so the Legislature here and in most countries of the Empire or in the Commonwealth have adopted what is known as the Contributory Negligence Act which adopts in substance the Rule which prevailed in the Admiralty Courts here where if two ships collided and were damaged, the loss was divided between the two in proportion to their fault; if they were equally at fault that is the way it was distributed. So to cure the obvious injustice of what was the common law this Act was passed, and it says this: 10

"Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault: Provided that: 20

- (a) If having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

The awarding of damage or loss in every action to which Section 2 applies shall be governed by the following provisions :

(a) The damage or loss (if any) sustained by each person shall be ascertained and expressed in dollars. 30

(b) The degree in which each person at fault shall be ascertained and expressed in the terms of a percentage of the total fault."

So what you will do in the first place is fix the damages in any event, as I say, and then if you find that both the plaintiff and the defendant were guilty of negligence which contributed to this accident, you will divide them and put the percentage, one 25% and one 75%, 40% and 60% or 50 - 50, 40

whatever you think is the proper proportion in which the loss should be sustained.

In the Supreme
Court of
British Columbia

No. 20

Charge to Jury
by Wood J. -
continued.

Now, in dealing with the question of negligence, I would like just to say this. It has been alleged by the defendant that the plaintiff was the author of his own wrong, that he drove out there wrongfully into the pathway of the streetcar; but it does not follow necessarily from that that he has no cause of action. There is a very old case which is known as the Donkey case, and it is like this except that I am not suggesting the plaintiff is a donkey but he was in much the same position as the donkey, because the owner of the donkey tethered it, in fact not only did he tether it but he fettered its forefeet and left it on the highway and the defendant came driving along smartly in his conveyance and ran over and killed the donkey. He disputed the claim because, forsooth, the donkey had no business there. The Court did not see it that way and they held that if the Jury was of the opinion that the accident was "caused by the default of the defendant's servant in driving too fast, or, which is the same thing, at a smartish pace, the mere fact of putting the ass upon the road would not bar the plaintiff of his action."

"All that is perfectly correct; for, although the ass may have been wrongfully there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man might justify the driving over goods left on a public highway, or even over a man lying asleep there."

Here this plaintiff, according to his evidence, was more or less stuck there. He says he was right across the track. The defendants say that he was just at the edge of the track and starting to make this turn with his hand out. It is for you to decide on this evidence just what happened. If there was that sort of situation as in the donkey case, if this man were there in his car in the middle of the track, it would not justify the motorman of the bus running over him. Once he saw and realised the man was in trouble and in a dangerous place he would naturally of course do his best to avoid the accident. If he had paid

In the Supreme
Court of
British Columbia

—
No. 20

Charge to Jury
by Wood J. -
continued

no attention and ran over him the company would be liable.

Of course, the evidence of the motorman is that he stopped as soon as he appreciated that he was there; as soon as he perceived him and saw the danger he sounded his gong. I do not think the gong had anything to do with it one way or another. That is another thing that had no bearing on the accident. If he had not started his gong it would not make any difference because the gong could not move him; but he put on his brakes he said.

10

Now the question is whether or not there was any negligence on his part, whether or not his negligence was such as to make the company entirely liable, whether after seeing he was astraddle the car tracks where he was bound to be run over if he did not stop when he could have stopped, or whether or not he was negligent at all. If he is not negligent at all, of course the action will be dismissed. Or whether or not on the other hand he was guilty of negligence which contributed to the accident in failing to keep a proper look out or not applying his brakes when he should have, or that he was not properly trained -- it is for you to say someone or other of those things and if there is more than one you should show one or more of those things of which the motorman or company was negligent and that that negligence contributed to the accident; and whether or not the plaintiff also was guilty of some negligence which contributed to the accident in any of the ways that have been put forward by the defendant; that he was the author of his own injury knowing that the streetcar was coming along there and driving in front of it contrary to the by law and contrary to the other regulations; in crossing the street aside altogether from the question of the regulations and taking chances of crossing there under the circumstances.

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I don't know that it makes very much difference, whether the west bound traffic was on the streetcar track or on the space between the streetcar and the cars on the north side of the street. I do not quite see what difference that makes. It

does make some difference as to whether the car was sideswiped or right across the track. You have heard all the evidence on that, and I do not know that I should express any view on it one way or another, except this, that if he were on the track right across the track for all the time that was suggested then the motorman should have realized earlier than he did realize that there was liable to be an accident. If on the other hand he was just edging the track about to turn, it is another matter.

10

Perhaps I should say something about the evidence given yesterday because we may have forgotten some of it.

Dowling was the first witness. He is a police officer and he was there after the accident, and he asked the motorman what happened and the motorman stated the brakes didn't seem to work; the plaintiff had been taken to the hospital.

20

Read was sitting in the second seat. Mrs. Nelson also said she was in the second seat. There is some confusion about that. "It was late afternoon and the streetcar was going pretty fast. I do not think it slowed down at all before the collision. It went two streetcar lengths after the accident. I didn't see the auto before the accident--" that was stressed by Senator Farris-- "-- but the motorman sounded his gong and put on the brakes at the same time." He did not see the auto, "It may be a minute between the time the brakes were applied and the accident." Of course it was not any minute.

30

Then Mr. Quinn, he was the attendant at the Texaco Garage. He saw the collision; he said it was a little before six o'clock and he saw the car coming down Broadway - that is the plaintiff's car -- and it had crossed Heather; when he first saw it it turned on the tracks and stopped to let the traffic go by so that he could get through.

40

"The driver put his left hand out. I had not seen the streetcar up to then". He said the

In the Supreme
Court of
British Columbia

No. 20

Charge to Jury
by Wood J. -
continued.

In the Supreme
Court of
British Columbia

No. 20

Charge to Jury
by Wood J. -
continued.

plaintiff stopped 15 to 20 seconds on the street-car track. He saw the streetcar just when it hit Heather intersection. From there to the car was 75 to 100 feet. "I don't think it slowed down. It was going 35 to 40 miles an hour." Well, you have heard what he said about that speed. Nobody else puts it anything like as fast as that. "I was watching the streetcar to see if it would stop so I didn't notice whether the plaintiff's car moved. It was pushed ahead about 50 feet." -- 10
that is the plaintiff's car -- "And I ran behind the streetcar and around to the front and helped the plaintiff, took him to the ambulance. The motorman was standing in front of the streetcar when I came back and the motorman said the brakes wouldn't hold. The policeman and several others were there and I don't know whether the plaintiff was talking to the policeman or somebody else."

He says with regard to the accident that he had an interview with the British Columbia Electric 20
Railway Company investigator and told him the plaintiff had his hand out. As he started to turn he stopped with the left front of the car foul of the rail, and then the streetcar struck it a glancing blow which flipped the car around against the streetcar. He said he could not see the streetcar from where he was standing some way up Broadway. He says the streetcar was going at a fast clip. The plaintiff made a gradual turn 30
and was at an angle at the edge of the track and was not on the devil strip. This witness is called by the plaintiff but he does not agree with the plaintiff on that subject. He says the streetcar went 100 feet from the time he saw it first until it hit the motorcar. "It was crossing the intersection when I first saw it, about the middle of the intersection."

Then you heard the doctor's evidence. I do not think I need amplify or review it. The man 40
was seriously injured. For work of the kind he was doing he is 100% incapacitated; his general

usefulness is impaired to the extent of 75% and no improvement is expected.

In the Supreme
Court of
British Columbia

No. 20

Charge to Jury
by Wood J. -
continued.

10 Then you heard the plaintiff's evidence. That has been canvassed and re-canvassed and I do not think there is any need for recalling that to you, because we have heard a lot of it today. There was a lot of discussion of it today, I should say. Then Mrs. Nelson was called for the Defence, and she says it was a normal rate of speed. The first thing she heard was the clanging of the bell. "On looking out the door which was open I couldn't see a thing, and then I looked out of the window and saw the back of a car. It seemed to be the same moment as the impact."

20 Then you have Mr. McEachren's evidence, the conductor, that the speed was not excessive. He of course was at the rear of the car and did not see. He said they were going about 20 or 25 miles an hour, as I understood him. He said normal speed was 20 miles and they were going about 25. He did not remember any parked cars.

30 Then we have the evidence of the motorman. He first saw the automobile as he was entering the intersection of Heather. He looked out for passengers, just a glance, looked to see if there were any passengers and then ahead and the car was 6 inches to a foot from the right of the track and he couldn't get by. He thought it was moving slowly at the time. He applied full air and rang the gong, couldn't stop, and ran into the car. He was asked, of course, in what time he could stop going at a certain speed. I suppose he should know that the same way that any of us should know at 20 miles an hour, in how many feet we could stop an automobile. I am afraid that a lot of us do not. Is there anything that counsel would like me to add.

In the Supreme
Court of
British Columbia

No. 20

Charge to Jury
by Wood J. -
continued.

Mr. Spring: No, my lord.

Mr. Farris: No, my lord.

The Court: You may now retire, gentlemen. Perhaps I should say that your verdict must be unanimous -- at the moment I should say that, anyway - and you might take these questions and all the exhibits with you. You might take the plan particularly. Mr. Foreman, you might sign as foreman after you have decided the answers.

(JURY RETIRE AT 4.20 p.m.)

10

(JURY RETURN AT 5.33 p.m.)

The Court: Mr. Foreman, I had you called back because I neglected to say that you have the right to come back and ask for further instructions on any matter that might be bothering you if you cared to, if there is anything you wanted cleared up. I should have mentioned that but there are so many things to think of I overlooked it. Is there anything you think of?

Is there any matter of law or evidence?

20

Mr. Farris: No, my lord, no questions.

(JURY RETIRE AT 5.35 p.m.)

No. 21

VERDICT OF THE JURY

(JURY RETURN AT 6.05 P.M.)

The clerk: Gentlemen of the Jury, have you agreed upon your verdict. If so, what is it?

The Foreman: We have.

The Court: "1. Was the motorman or the defendant company guilty of negligence which contributed to the accident?

10 A. Yes.

2. If so, of what did such negligence consist?

A. The brakes were not applied in sufficient time. The motorman neglected to keep a proper look out.

3. Was the Plaintiff guilty of negligence which contributed to the accident? A. No.

Number 4 of course is not answered.

"5. If both the plaintiff and the defendant were guilty of negligence which contributed to the accident, in what percentage did the negligence of each contribute? A. Defendant 100%

"General damages	\$1,688.55
Wages	2,300.00
Loss of earning power	1,700.00
Special damages	15,000.00 "

The Court: I take it you mean that you want to allow him the total of those sums.

The Foreman: Yes.

30 The Court: That is \$15,000 General damages I suppose you mean, \$1,700.00 for loss of earning power, \$2,300.00 for wages and \$1,688.55 special damages. Is that correct?

In the Supreme Court of British Columbia

No. 21

Verdict of the Jury.

In the Supreme
Court of
British Columbia

No. 21

Verdict of the
Jury.

Mr. Farris: Yes, my lord.

The foreman: The \$1,688.55 we figured was
general damages.

The Court: They are special damages. That is
what you mean I take it. Are you all agreed on that.

The foreman: Yes.

The Court: That makes a total of \$19,000 gen-
eral damages and \$1,688.55 special damages. That
is the effect of what you mean?

The foreman: Yes.

10

Mr. Spring: I move for judgment my lord, in
accordance with the jury's findings.

Mr. Farris: I have nothing to say, my lord.

The Court: Judgment accordingly. Thank you
very much Mr. Foreman and members of the Jury for
your careful consideration of this case. I am
sorry to have kept you so late from dinner. You
will now be excused.

(CONCLUDED)

No. 22

List of
questions put
to the Jury by
Wood J. and
answers.

No. 22

LIST OF QUESTIONS PUT TO THE JURY BY WOOD J. AND
ANSWERS.

20

1. Was the motorman or the defendant company guilty
of negligence which contributed to the accident?

A. Yes.

2. If so, of what did such negligence consist?

A. The brakes were not applied in sufficient
time. The motorman neglected to keep a prop-
er lookout.

3. Was the plaintiff guilty of negligence which
contributed to the accident?

30

A. No.

4. If so, of what did such negligence consist?
 5. If both the plaintiff and the defendant were guilty of negligence which contributed to the accident, in what percentage did the negligence of each contribute?

In the Supreme Court of British Columbia

No. 22

List of questions put to the Jury by Wood J. and answers.

A. Defendant	100%	
Plaintiff	%	
General damages:		\$1688.55
Wages		2300.00
10 Loss of earning power		1700.00
Special damages		<u>15,000.00</u>
		<u>\$20688.55</u>

No. 23

FORMAL JUDGMENT.

BEFORE THE HONOURABLE) WEDNESDAY, the 13th day
 MR. JUSTICE WOOD) of December, A.D.1950.

No. 23
 Formal Judgment

13th December
1950.

20 THIS ACTION having come on for trial at Vancouver, British Columbia, on the 12th day of December, A.D.,1950 and the 13th day of December, A.D. 1950, before the Honourable Mr. Justice Wood, with a jury, in the presence of Mr. Harry C.F. Spring, Counsel for the Plaintiff, and the Hon. J. W. DeB. Farris, K.C., and Mr. W.H.Q. Cameron, Counsel for the Defendant; AND UPON HEARING the evidence adduced by the plaintiff and the defendant and what was alleged by Counsel aforesaid; AND THE JURY HAVING FOUND that the Defendant's servant was negligent and caused damage to the plaintiff in the sum of \$20,688.55, and that the plaintiff was not negligent, and the said Mr. Justice Wood having ordered that Judgment be entered for the plaintiff for the sum of \$20,688.55 and costs;

30 THIS COURT DOETH ORDER AND ADJUDGE that the plaintiff do recover against the defendant the sum of \$20,688.55, and the costs of this action forth-

In the Supreme
Court of
British Columbia

No. 23

Formal Judgment

13th December
1950.

with after taxation thereof.

BY THE COURT

"E.W. Wells"

Dep. District Registrar.

Appd.
J.W.DeB.F.

ENTERED

Jan.9.1951.Order Book, Vol.77.Fol174.

Checked
G.B.
L.A.M.
D.R.

H.S.W.
J.

Per H.A.S.

10

In the Court of
Appeal for
British Columbia

No. 24

Notice of Appeal.

26th January
1951.

TAKE NOTICE that the Defendant intends to appeal and does hereby appeal to the Court of Appeal of the Province of British Columbia from the Judgment of the Honourable Mr. Justice Wood of the Supreme Court of British Columbia pronounced herein on the 13th day of December, 1950 and entered the 9th day of January, 1951 for the plaintiff on the verdict of the jury in the sum of Twenty Thousand Six Hundred and Eighty-eight Dollars and Fifty-five Cents (\$20,688.55), and costs.

20

AND FURTHER TAKE NOTICE that the Court of Appeal will be moved at the Court House in the City of Vancouver, Province of British Columbia, on Tuesday the 6th day of March, 1951 at the hour of 11 o'clock in the forenoon, or so soon thereafter as Counsel can be heard, by Counsel on behalf of the Defendant for an Order reversing the said Judgment and setting aside the verdict of the jury on the following, amongst other grounds:

1. The verdict was against the evidence and the weight of evidence
2. The judgment and verdict were contrary to the law and to the evidence.
3. The jury erred in finding the defendant guilty of negligence.
4. The verdict of the jury was perverse in finding that the negligence of the defendant contributed 100% to the accident.

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5. The verdict of the jury was perverse in finding that the plaintiff was not guilty of any negligence contributing to the accident.
6. The damages were excessive.
7. The learned judge erred in his directions to the jury in the following particulars, amongst others:

In the Court of
Appeal for
British Columbia

No. 24

Notice of Appeal.

26th January
1951.

10

(1) The learned judge erred in not instructing the jury as to the legal consequences resulting from the plaintiff's failure to obey Sections 31(1)(2) and 41 of the Traffic By-laws and Section 3 (j) of the Motor Vehicle Act, and the provisions of the Consolidated Railway Company's Act of 1896.

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(2) The learned judge erred in comparing the case at Bar to the "Donkey Case" and suggesting that the plaintiff was in much the same position as the donkey, because the owner of the donkey tethered it, in fact not only did he tether it but he fettered its forefeet and left it on the highway and the defendant came driving along smartly in his conveyance and ran over and killed the donkey. He disputed the claim because, forsooth, the donkey had no business there. The Court did not see it that way and they held that if the jury was of the opinion that the accident was "caused by the default of the defendant's servant in driving too fast, or, which is the same thing, at a smartish pace, the mere fact of putting the ass upon the road would not bar the plaintiff of his action."

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"All that is perfectly correct; for, although the ass may have been wrongfully there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man might justify the driving over goods left on a public highway, or even over a man lying asleep there."

(3) The learned judge erred in the continuation of the comparison of the Donkey Case in stating:

In the Court of
Appeal for
British Columbia

No. 24

Notice of Appeal.

26th January
1951.

"Here this plaintiff according to his evidence, was more or less struck there."

- (4) The learned judge erred in charging the jury as follows:

"If there was that sort of situation as in the donkey case, if this man were there in his car in the middle of the track, it would not justify the motorman of the bus running over him. Once he saw and realized the man was in trouble and in a dangerous place he would naturally of course do his best to avoid the accident. If he had paid no attention and ran over him the company would be liable."

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In this statement the learned judge failed to make clear to the jury that in order for the defendant to be wholly liable in these circumstances it must be proved that the motorman saw the motor car and saw that it struck on the track at a time when he could have avoided the accident and that having seen and appreciated the predicament of the plaintiff had negligently run over him.

20

- (5) The learned judge erred in instructing the jury:

"I don't know that it makes very much difference, whether the west bound traffic was on the street car track or on the space between the street car and the cars on the north side of the street. I do not quite see what difference that makes"

30

- (6) The learned judge should have instructed the Jury that if the plaintiff was astraddle the track for a period long enough to enable the motorman to see and realize the danger, it followed that the plaintiff was there long enough before the accident to enable him to have driven his car out of danger.

- (7) The learned judge should have told the jury that if the plaintiff was negligent in crossing the street car track other than at an intersection, such negligence

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in the circumstances was a contributing cause to the accident.

(8) The learned judge did not correctly and adequately outline the evidence.

(9) The learned judge failed to present the issues clearly and correctly to the jury.

DATED at Vancouver, B.C., the 26th day of January, 1951.

A. Bruce Robertson

10

Solicitor for the Defendant.

To the Plaintiff
And to his Solicitors:
H.C.F. Spring Esq.,
201 Bentall Building,
999 West Pender Street,
Vancouver, B.C.

No. 25.

FORMAL JUDGMENT OF COURT OF APPEAL.

20

BETWEEN: MARVIN SIGURDSON PLAINTIFF
(Respondent)

B.C.L.S. AND:

\$2.00 BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
VANCOUVER DEFENDANT
Nov.21 1951 (Appellant)
REGISTRY

CORAM:

30

THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE SIDNEY SMITH
THE HONOURABLE MR. JUSTICE BIRD.

VANCOUVER, B.C., the 30th day of April, 1951.

THE APPEAL from the Judgment of the Honourable Mr. Justice Wood of the Supreme Court of British

In the Court of
Appeal for
British Columbia

No. 24

Notice of Appeal.

26th January
1951.

No. 25

Formal Judgment
of Court of
Appeal.

30th April 1951.

In the Court of
Appeal for
British Columbia

No. 25

Formal Judgment
of Court of
Appeal.

Columbia pronounced the 13th day of December, 1950 coming on for hearing on the 27th and 28th days of March, 1951, AND UPON HEARING the Honourable J.W. deB. Farris, K.C. and Mr. W.H.Q. Cameron of Counsel for the Appellant, and Mr. Harry C.F. Spring of Counsel for the Respondent, AND UPON READING the Appeal Book, and Judgment being reserved until this day;

THIS COURT DOTH ORDER AND ADJUDGE that the said Appeal be and the same is hereby allowed to the extent that the Respondent is found guilty of contributory negligence and equally at fault in like degree with the Appellant; 10

THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Respondent do recover from the Appellant the sum of \$10,344.28, and that the Judgment in the Court below be and the same is hereby varied accordingly;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the parties be at liberty to speak to the matter of costs. 20

"G.McG.S." BY THE COURT
C.J.B.C.
CHECKED "R.W." "L.A.Menendez"

Approved as to form REGISTRAR
"H.C.F.S." ENTERED
Nov.21 1951.
Order Book, Vol.16, Fol.265
Per "C.A."

No. 26

Reasons for
Judgment

A) Sloan, C.J.B.C.
30th April 1951.

No. 26.

30

REASONS FOR JUDGMENT OF THE COURT OF APPEAL.

A) SLOAN, C.J.B.C.

In my opinion, with respect, the learned trial Judge erred in instructing the jury that, in the circumstances herein, the principle of Davies v. Mann (1842) 10 M.& W. 546 applied. This direction was prejudicial to the defendant and in consequence the verdict must be set aside.

It seems to me that this is a case in which this Court can reach conclusions of fact without directing a new trial with its consequent expense and delay.

In the Court of
Appeal for
British Columbia

No. 26

Reasons for
Judgment

A) Sloan, C.J.B.C.
30th April 1951.

10 I therefore express my view: The negligence of the motorman, in my conception of the facts, consisted in his failure to slow down when he knew or ought to have known of the potential danger inherent in the respective positions of the street car and the respondent's motor car in order that the street car could be brought to a stop when and if the danger of collision became not merely potential but critical and imminent.

20 If his failure to appreciate the possible impending danger until it was too late for an effective application of his brakes was due to his failure to keep a proper look-out, I do not think his belated realisation of the peril, for that reason alone, could excuse his failure to apply his brakes at an earlier stage and thus avoid the accident. To hold otherwise might well be construed as an invitation to recklessly disregard traffic conditions with an improper look-out relied upon as an excuse for the consequence of careless conduct, i.e., the failure to apply brakes in time to avoid an impact.

30 In my opinion, in such a situation, *Davies vs. Mann*, supra might well be applied provided the object struck was incapable of exercising an independent judgment and effort to escape the impending peril. But in my view that is not this case.

40 As I see it the failure of the motorman to apply his brakes until he actually became aware the driver of the motor car was not going to exercise reasonable prudence and clear the tracks cannot render his lack of a prior and full appreciation of the developing situation the sole cause of the accident. His failure to apply his brakes before he did was not due to lack of a proper look-out but to his expectation that the motor-car, as a mobile object, would not remain in a place of danger but would get off the tracks to escape the threat of the approaching street-car.

The motor-man was, however, in my opinion, as

attack the finding of negligence, but claims that contributory negligence was established and that the verdict was perverse in finding none.

In the Court of
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British Columbia

No. 26

Reasons for
Judgment

B) Sidney Smith
J.A.

The accident took place on Broadway in Vancouver a little east of Heather Street. The plaintiff driving east had passed a street-car going the same way. He admits that at the time of the impact his motor-car was across the car tracks in whole or in part and that he was attempting to cross the street to go to a service station on the north side of Broadway. His story is that when he first took his position he looked back and saw the street-car still at some distance; that he saw a gap in the west-bound traffic through which he thought he could go, but this gap closed and before another presented itself the street-car was upon him, in spite of his last-minute efforts to back out.

There can be no doubt that this attempt to cross the street in the middle of the block was a breach of the city by-law which allows such a crossing only where there is no danger from other traffic. Not only that, but the attempt to take this course on a busy street like Broadway at approximately six o'clock P.M. (when the accident occurred) was such a reckless and foolhardy operation that the plaintiff was clearly inviting trouble. It seems to me impossible to say that the plaintiff was not guilty of negligence contributing to the accident unless the jury must be taken to have held that in spite of his negligence the defendant should have avoided the accident.

There was evidence on which the jury could have found this, but the evidence was conflicting so that the jury could have found that the defendant was not negligent at all. The material findings on this point were:

Q.1. Was the motorman or the defendant company guilty of negligence which contributed to the accident?

A. Yes.

Q.2. If so, of what did such negligence consist?

A. The brakes were not applied in sufficient

In the Court of
Appeal for
British Columbia

No. 26

Reasons for
Judgment

I have said, at fault in not applying his brakes to slow down his speed at the time when he knew or ought to have known of the potential danger so that the street car could have been brought to a stop to avoid the impact when he became aware the potential danger had become an actual and immediate peril. Shortly put he took a chance that the motor car would get off the tracks before he got to the point of impact.

A) Sloan, C.J.B.C.
30th April 1951.

Turning then to the driver of the motor car. He was, in my opinion, at fault under the circumstances, in turning on to the tracks in front of an approaching street-car -- which he knew was approaching when he performed this manoeuvre -- and stopping and remaining on the tracks when he could and should have extricated himself from the precarious position in which his careless disregard for his own safety had placed him. He took a chance that the street car would stop before it reached him and when he did endeavour to escape when the street car was upon him by putting his car in reverse gear and backing up he, like the motorman, waited too long before doing anything to avoid the collision. In this I think he was negligent and that his negligence contributed to the accident.

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In my opinion both the motorman and the driver of the motor car were equally at fault in like degree and I would apportion the damages accordingly.

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The appellant appealed against the quantum of damage, but I am unable to say that the verdict of the jury in this respect is one with which I should interfere.

I would allow the appeal to the extent indicated herein.

B) Sidney Smith
J.A.

B) SIDNEY SMITH J.A.

The defendant appeals from a judgment for damages arising out of a collision between a street-car and the plaintiff's motor-car. The jury by a special verdict negatived contributory negligence and found the defendant 100% to blame. On this appeal the defendant admits that it cannot

40

In the Court of
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British Columbia

No. 26

Reasons for
Judgment

B) Sidney Smith
J.A.

time. The motorman neglected to keep a proper lookout.

I think this last answer must be taken as a finding that as a result of the motorman's failure to keep a sufficient lookout he did not apply the brakes in time to avoid the collision. I think the answer cannot be read as finding that he failed to put on his brakes when he first saw the plaintiff, otherwise the second sentence of the answer would be needless. I think the answer also negatives the suggestion (on which there was conflicting evidence) that the brakes were defective.

10

Even assuming that the doctrines of "ultimate negligence" and "last opportunity" are still part of our law, on which I refrain from expressing any opinion, it seems to me impossible on the jury's findings on the defendant's negligence (as above interpreted) to hold that the plaintiff was not guilty of negligence contributing to this accident. The plaintiff argues that even assuming it was too late to stop the street-car by the time the motorman saw the plaintiff, still he was negligent, in not seeing the plaintiff sooner, and that this amounted to ultimate negligence. The plaintiff also relied strongly, as did the trial Judge, on *Davies vs. Mann* (1842) 10 M. & W. 546, claiming that he was in a position analogous to the hobbled donkey in that case, and that in substance the cases were on all fours.

20

At least one eminent English judge has recently expressed the view that *Davies vs. Mann* is no longer good law. I am not prepared to go that far, certainly not if the case is to be construed as *Evershed L.J.* (now *M.R.*) suggested in *Davies vs. Swan* (1949) 2 K.B. 291 at p. 317 as the case of a defendant who saw the helpless donkey in plenty of time to avoid it, but recklessly failed to take any steps. But I think there are two distinctions between *Davies v. Mann* and this case. In *Davies v. Mann* it is questionable whether there was any negligence by the plaintiff; here he was not only breaking the by-law, but also guilty of a foolhardy act. In *Davies v. Mann* as I have said, the defendant must be taken to have seen the donkey in time to avoid it; here the motorman did not see the plaintiff until it was too late. I agree with the view expressed by Professor Goodhart in 65L.Q.R.237,

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that a defendant is now not considered to have had the last chance to avoid a collision merely because if he had been keeping a better lookout he could have avoided the effect of continuing negligence by the plaintiff. If the defendant cannot avoid the danger when he sees it, he is not guilty of ultimate negligence (even assuming there is such a thing) but at most of contributory negligence, because of his bad lookout.

In the Court of
Appeal for
British Columbia

No. 26

Reasons for
Judgment

10 The suggested rule would to my mind work in-
justice in this case. A motorman ought to keep an
adequate lookout, but that does not mean he must
keep his eyes glued to the rails. A motorman is
entitled to assume that others will act lawfully,
and is to my mind not bound to keep such a lookout
that he will instantly see any person who may sud-
denly, in violation of the law, drive his car ac-
ross the rails, especially when he has no reason
whatever to anticipate such a move. I do not think
20 it lies in the plaintiffs' mouth to complain that
the motorman failed to exercise extraordinary vig-
ilance and so save him from the results of his own
misconduct and folly.

B) Sidney Smith
J.A.

30 My conclusions are consistent with the view
that there is such a thing as ultimate negligence,
and that if the motorman had seen the plaintiff in
time to stop, but had then failed to apply his
brakes, his failure to act on this last chance would
have left the plaintiff's unlawful and reckless
conduct no longer a factor. Even if this is the
law, I think the verdict should be set aside be-
cause:

(1) I think the verdict negatives such a fail-
ure, and then the plaintiff's contributory negli-
gence is clear:

40 (2) Even if the verdict does not negative ult-
imate negligence, the trial Judge misdirected the
Jury on the effect of *Davies v. Mann* and did not
point out that this turned on the Defendant's see-
ing the plaintiff in time to avoid him; so that
the jury's finding that the defendant here was 100%
to blame may well have been due to such misdirection.

If, as many Judges now think, there is no such
thing as ultimate negligence, the plaintiff's con-
tributory negligence is even clearer, whatever the

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British Columbia

No. 26

Reasons for
Judgment

B) Sidney Smith
J.A.

meaning of the jury's finding Defendant's Counsel asked us, if we hold that there was contributory negligence (as I find), to ourselves apportion the parties' responsibility. This I think we can do. In the view I take they must be held equally to blame.

The defendant not only appealed against the findings on negligence, but against the award of damages. The amount found by the jury though large is not unconscionable. I would not disturb it. 10

I would allow the appeal as indicated.

C) Bird, J A.

C) BIRD, J.A.

I concur in the views expressed in his reasons for Judgment by my brother the Chief Justice, and would therefore allow the appeal in part.

No. 27

No. 27

Conditional
order for
leave to
appeal to the
Privy Council

CONDITIONAL ORDER FOR LEAVE TO APPEAL TO THE
PRIVY COUNCIL

CORAM:

THE HONOURABLE MR. JUSTICE O'HALLORAN
THE HONOURABLE MR. JUSTICE ROBERTSON
THE HONOURABLE MR. JUSTICE SIDNEY SMITH. 20

21st May 1951

VANCOUVER, B.C. Monday the 21st day of May,
A.D. 1951.

UPON MOTION of the Plaintiff (Respondent) for leave to appeal to the Judicial Committee of the Privy Council from the judgment of this Honourable Court delivered on Monday the 30th day of April, A.D.1951, allowing the Appeal herein of the Defendant (Appellant), coming on this day for hearing before this Honourable Court at the City of Vancouver, Province of British Columbia, AND UPON reading the Notice of Motion dated the 17th day of May, A.D. 1951 AND UPON reading the Affidavit of Harry Charles Frederick Spring sworn the 17th day of May A.D. 1951, and filed herein, 30

AND UPON reading the Appeal Book herein, AND UPON hearing Mr. Harry C.F. Spring, Counsel for the Plaintiff (Respondent) and Mr. W.H.Q. Cameron, Counsel for the Defendant (Appellant)

In the Court of
Appeal for
British Columbia

No. 27

10 THIS COURT DOTH ORDER that, subject to the performance by the Plaintiff (Respondent) of the conditions hereinafter mentioned, and subject to the final order of this Court upon the due performance thereof, leave to appeal to His Majesty in His Privy Council against the said judgment of this Honourable Court be granted to the Plaintiff (Respondent).

Conditional
order for
leave to
appeal to the
Privy Council

21st May 1951

20 AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff (Respondent) do within three months from the date hereof provide security to the satisfaction of this Honourable Court in the sum of £500 Sterling for the due prosecution of the said Appeal, and the payment of all such costs as may become payable to the Defendant (Appellant) in the event of the Plaintiff (Respondent) not obtaining an order granting final leave to appeal, or of the appeal being dismissed for want of prosecution and for payment of such costs as may be awarded by His Majesty, his heirs and successors, or by the Judicial Committee of the Privy Council to the said Defendant (Appellant) on such Appeal.

30 AND THIS COURT DOTH FURTHER ORDER that the Plaintiff (Respondent) do within six months from the date of this Order in due course take out all necessary appointments for settling the Transcript Record on such Appeal to enable the Registrar to certify that the Transcript Record has been settled, and that the provisions of this Order on the part of the Plaintiff (Respondent) have been complied with.

40 AND THIS COURT DOTH FURTHER ORDER that the costs of the Transcript Record on Appeal, and of all necessary certificates and of all costs of or occasioned by the said Appeal shall abide the decision of the Privy Council with respect to the costs of Appeal.

AND THIS COURT DOTH FURTHER ORDER that the said Plaintiff (Respondent) be at liberty within the said period of six months from the date of this Order to apply for a final order for leave to Appeal

In the Court of
Appeal for
British Columbia

No. 27

Conditional
order for
leave to
appeal to the
Privy Council

21st May 1951

as aforesaid on the production of a certificate under the hand of the Registrar of due compliance on his part with the terms of this Order.

AND THIS COURT DOTH FURTHER ORDER that all parties may be at liberty to apply to this Court wheresoever the same may be sitting.

Approved as to form
"W.H.Q.C."

BY THE COURT

"E.W. WELLS"
DEP. REGISTRAR.

10

Checked
"R.W." "C.H.O'H".
J.A.

ENTERED
NOV 14 1951
ORDER BOOK VOL.16 Fol.253.
Per "J.A."

No. 28

Registrar's
Certificate

15th November
1951

No. 28

REGISTRAR'S CERTIFICATE

I, the undersigned Registrar of the Court of Appeal, at the City of Vancouver, Province of British Columbia, HEREBY CERTIFY:-

20

That pursuant to the Order of the Court of Appeal, dated the 21st day of May, A.D.1951, the sum of £500 sterling was on the 20th day of August, A.D. 1951, paid into this Court to the credit of this cause as security for the due prosecution of the Appeal herein by the Plaintiff (Respondent) and to His Majesty in His Privy Council and for the payment of all such costs as may become payable to the Defendant (Appellant) in the event of the Plaintiff (Respondent) not obtaining an order granting final leave to Appeal or of the Appeal being dismissed for want of prosecution or for such costs as may be awarded by His Majesty in Council for the Defendant (Appellant) on such appeal.

30

AND I HEREBY FURTHER CERTIFY that the said Plaintiff (Respondent) has taken out all appointments necessary for settling the transcript record on such appeal, and that the said transcript record has been duly settled and all provisions of the said Order of this Honourable Court dated the 21st

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day of May, A.D. 1951, have been complied with by the said Plaintiff (Respondent).

(Sgd.) L.A. MENENDEZ
REGISTRAR

Dated at VANCOUVER, British Columbia, this 15th day of November A.D. 1951.

In the Court of Appeal for British Columbia

No. 28

Registrar's Certificate

15th November 1951.

No. 29

No. 29

10

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE PRIVY COUNCIL.

Order granting final leave to appeal to the Privy Council

BETWEEN: MARVIN SIGURDSON PLAINTIFF (Respondent)

16th November 1951.

VANCOUVER NOV.29 1951 AND REGISTRY

B.C.L.S. \$2.00 BRITISH COLUMBIA ELECTRIC RAILWAY COMPANY LIMITED DEFENDANT (Appellant)

20

CORAM:

THE HONOURABLE MR. JUSTICE O'HALLORAN
THE HONOURABLE MR. JUSTICE ROBERTSON
THE HONOURABLE MR. JUSTICE SIDNEY SMITH

VANCOUVER, B.C., Friday the 16th day of November, A.D. 1951.

30

UPON MOTION on behalf of the Plaintiff (Respondent) for leave to appeal to His Majesty in His Privy Council from the Judgment of this Honourable Court delivered on Monday the 30th day of April, A.D.1951, AND UPON READING the said Judgment and the Appeal Book herein, AND UPON READING the Conditional Order of this Honourable Court made the 21st day of May, A.D. 1951 and the Certificate of the Registrar dated the 15th day of November, A.D. 1951, AND UPON hearing Mr. Harry C. F. Spring, Counsel for the said Plaintiff (Respondent), and NO ONE APPEARING on behalf of the Defendant (Appellant),

In the Court of
Appeal for
British Columbia

No. 29

Order granting
final leave to
appeal to the
Privy Council

16th November
1951.

although duly served with Notice of this Motion.

THIS COURT DOTH ORDER that leave to appeal to His Majesty in His Privy Council against the said Judgment of this Honourable Court be and the same is hereby granted to the Plaintiff (Respondent).

ENTERED
Nov.29, 1951
Order Book Vol.16
Fol 272

Per "J.A."

CHECKED
"R.W."

BY THE COURT

"E.W. WELLS."

DEP. REGISTRAR.

10

"C.H.o'H"
J.A.

Approved as to form
"A.B.R."

No. 30

Order as to
Costs

19th November
1951.

No. 30

ORDER AS TO COSTS

BETWEEN: MARVIN SIGURDSON PLAINTIFF
(Respondent)

B.C.L.S. AND
\$2.00

VANCOUVER
Nov.21 1951
REGISTRY

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
DEFENDANT
(Appellant)

20

CORAM:

THE HONOURABLE THE CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE SIDNEY
SMITH
THE HONOURABLE MR. JUSTICE BIRD

30

VANCOUVER, B.C. the 19th day of November,
1951.

UPON MOTION this day, AND UPON HEARING the Honourable J.W.deB. Farris, K.C. and Mr. W. H. Q. Cameron of Counsel for the Appellant and Mr. Harry C.F. Spring of Counsel for the Respondent;

THIS COURT DOTH ORDER AND ADJUDGE that each party shall tax its costs in the Court below as if successful and shall recover fifty per cent of its

costs against the other party with right of set off;

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that each party shall tax its costs of the appeal herein as if successful and that the Appellant shall recover ninety per cent of its costs from the Respondent and that the Respondent shall recover ten per cent of his costs from the Appellant with right of set off of costs recoverable in this Court and in the Court below.

In the Court of Appeal for British Columbia

No. 30

Order as to Costs

19th November 1951.

BY THE COURT

"E.W. WELLS."

ENTERED

DEP. REGISTRAR.

Nov.21 1951
Order Book,
Vol.16 Fol.266
Per "CA"

Approved as to form
"H.C.F.S."

Checked
"R.W."

EXHIBITS.

Exhibits

1.

1. - PLAN OF INTERSECTION OF BROADWAY AND HEATHER STREET, VANCOUVER.

Plan of Intersection of Broadway and Heather Street Vancouver.

(A.B. p.12)
Separate Document.

1A. - PLAN OF INTERSECTION OF BROADWAY AND HEATHER STREET, VANCOUVER, (marked by plaintiff)
(A.B.p.59).

1A.
Plan of Intersection of Broadway and Heather Street Vancouver. (marked by Plaintiff).

Separate Document.

Exhibits

2.

2. - PLAN OF INTERSECTION OF BROADWAY AND HEATHER STREET, VANCOUVER.

Plan of Intersection of Broadway and Heather Street Vancouver.

(A.B.p.43).

Separate Document.

10.

10. - STATEMENT BY PLAINTIFF.

Statement by Plaintiff

August 20, 1948

Mr. Marvin Sigurdson, 1081 East 40th Avenue, (no phone) called at the offices.

20th August 1948.

On August 6th about 5.45 p.m. at Broadway near Heather Streets. I was driving my auto east on Broadway - I had turned onto Broadway at Hemlock. Then when I reached Heather I pulled over onto the rails and continued on for about 100 feet with the intention of turning into a gas station which is on the north side of Broadway. I had made the proper signal but I had to stop on the rails because of westbound auto traffic. I knew there was a street-car behind me as I had passed it at Laurel Street and it was then either just stopping or just starting up. Then after I stopped on the tracks I heard the gong ringing so I looked back and saw this car just west of Heather and travelling pretty fast. I figured that possibly the car might not be able to stop so I put my auto in reverse and tried to back up clear of the rails but before I was fully clear the car struck my auto on the left side from the left front door and running board to the front - the front end is extensively damaged. I had my left arm out of the window to make the left turn signal and I think I was just pulling my arm back in when the impact occurred - in any case my arm and wrist and hand were injured. I was taken to Vancouver General Hospital, where it was found that I had broken my forearm and the bones across the back of my hand - a tendon in my hand was also cut. I was kept in the hospital until today (2 weeks) and am being attended by Dr. Hunter - Birks Building, who called in a Dr. Ganshorn to apply the cast and set the breaks. I expect that I will have a

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cast on for about another month yet.

I am employed at Girodway Sawmills as a millwright and was intending to get married on the day following - I had just been down to pick up boat reservations, etc. and was on my way home at the time.

The auto is a 1933 Chevrolet Sedan, B.C.R 1-595, can be seen at Service Garage, 600 Blk. W. Broadway. See it Monday A.M.

Exhibits

10.

Statement by
Plaintiff

20th August
1948.

continued.

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M. Sigurdson.

11. - TRAFFIC BYE LAW NO.2849 OF CITY OF VANCOUVER
- (CONSOLIDATED).

11.

Exhibit 11 is the City of Vancouver Street and Traffic By-law No.2849. The relevant parts are as follows:

Traffic Bye Law
No.2849 of City
of Vancouver.
(Consolidated)

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"33 (1) The driver of any vehicle while proceeding upon any street-car track in front of any street-car upon any street shall forthwith remove such vehicle from such tracks as soon as practical after signal of operator of street-car in order that such street-car may proceed free and uninterrupted.

1st June 1950

(2) When a street-car has commenced to cross an intersection, no driver of any vehicle shall drive such vehicle upon, along, or across the car tracks within such intersection immediately in front of such street-car."

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"41. No driver of a vehicle shall drive such vehicle from one side of a street to the other at any place other than at an intersection or street end, unless such driver shall have first ascertained that such movement can be made without obstructing traffic and can be made in safety having regard to the nature, condition, and use of the roadway, and the traffic which actually is at the time or might reasonably be expected to be on the highway."

Exhibits.

12.

12. - EXTRACT FROM REGULATION PURSUANT TO THE

Extract from
Regulation
Pursuant to
Motor Vehicle
Act R.S.B.C.
1948 Chapter 1.

MOTOR VEHICLE ACT R.S.B.C. 1948 CHAPTER 227.

"3(j) Before turning, stopping, or changing course on the highway of any motor-vehicle, and before turning such vehicle when starting the same, it shall be the duty of the operator thereof first to ascertain whether there is sufficient space for such movement to be made in safety, and the operator shall give a signal plainly visible to the operators of other vehicles of his intention to turn, stop, or change his course. Such signal shall be given either by the use of the hand and arm or by the use of an approved mechanical or electrical device:

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When the signal required by this regulation is given by the use of the hand and arm the intention to turn the motor-vehicle toward the left shall be indicated by extending the hand and arm horizontally from and beyond the left side of the motor-vehicle; the intention to turn to the right shall be indicated by extending the hand and arm vertically with the hand pointing upward out from the left side of the motor-vehicle; when the signal to be given is to indicate the intention to stop a motor-vehicle or abruptly or suddenly to check its speed, it shall be given by extending the hand and arm out from and beyond the left side of the motor-vehicle and pointed in a downward direction."

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Exhibits

13.

13. - EXTRACT FROM PAMPHLET ON CANADIAN GOVERNMENT ANNUITIES.

Extract from Pamphlet on Canadian Government Annuities.

IMMEDIATE LIFE ANNUITIES Payable Monthly		
Age Last Birthday	M A L E S	
	Premium for Annuity of \$100	Annuity obtain- able for premium of \$1,000
	\$	\$
22	2,472	40.45
23	2,451	40.80
24	2,429	41.17
25	2,407	41.56
26	2,385	41.93

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DOCUMENT.

EXTRACT FROM CONSOLIDATED RAILWAY COMPANIES ACT 1896.

Document.

Extract from the Consolidated Railway Company's Act, 1896, Statutes of British Columbia, 1896, Chapter 55, referred to in paragraph 4(b) of the Defence:

Extract from Consolidated Railway Companies Act 1896.

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"38. The cars and carriages of the Company, while running on the said railways, or any of them, shall have the right to use the said railways as against all other vehicles whatever; and all other such vehicles using the said railways, whether meeting or proceeding in the same direction as the said cars or carriages, shall turn out of the said track of the said railways and permit the said cars and carriages to pass, and shall in no case and under no pretence whatever obstruct or hinder the passage thereof and the free use of the said railways by the said cars and carriages of the Company."

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ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

B E T W E E N

MARVIN SIGURDSON
(Plaintiff) Appellant

- and -

BRITISH COLUMBIA ELECTRIC
RAILWAY COMPANY LIMITED
(Defendant) Respondent

RECORD OF PROCEEDINGS

BLAKE AND REDDEN,
17, Victoria Street,
Westminster.
Solicitors for the Appellant

LINKLATERS AND PAINE,
Austin Friars House,
6, Austin Friars,
London, E.C.2.
Solicitors for the Respondent