

THE
ONTARIO WEEKLY REPORTER

VOL. 24

TORONTO, OCTOBER 2, 1913.

No. 21

HON. MR. JUSTICE LENNOX.

SEPTEMBER 15TH, 1913.

RAMSAY v. TORONTO RW. CO.

5 O. W. N. 20.

Negligence—Street Railway—Death of Pedestrian—Gross Contributory Negligence—Vagueness in Answers of Jury — Non-Suit—Motion for Granted.

LENNOX, J., *held*, that where the plaintiff's case in an action for damages for the death of a person killed by being struck by a street car of defendants, disclosed that the deceased walked diagonally across a street, at a place other than a regular crossing, without looking to see if a car was approaching and with her back to the approaching car, the defendants were entitled to a non-suit, as the facts clearly disclosed that even allowing for negligence on the part of the defendants, the deceased was the author of her own disaster.

Dublin & Wexford Rw. Co. v. Slattery, 3 A. C. 1156, followed.

Rowan v. Toronto Rw. Co., 29 S. C. R. 717, discussed.

Action by administrator of Jean Spence who was killed on the evening of the 11th of December, 1911, by coming in contact with one of the defendants' cars as she and her sister Lizzie Armstrong were crossing Bathurst street at a point between St. Patrick and Robinson streets in the city of Toronto.

J. P. MacGregor, for plaintiff.

D. L. McCarthy, K.C., T. Herbert Lennox, K.C., and Keith Lennox, for defendants.

HON. MR. JUSTICE LENNOX:—Lizzie Armstrong was the only witness called to testify as to what occurred immediately before and at the time of the casualty. The other testimony was, in the main, theoretic and speculative, and, more often than otherwise, was based upon assumed or unverified premises. Subject to one or two notable exceptions, the jury accepted the evidence of Lizzie Armstrong; and I can find no good reason why her account of what happened