

MIDDLETON, J.

APRIL 17TH, 1918.

PESHA v. CANADIAN PACIFIC R.W. CO.

Railway—Passenger Killed by Train when Alighting from another Train at Station—Invitation to Alight—Countermand—Failure to Bring to Knowledge of Passenger—Duty of Conductor and Trainmen to Care for Safety of Passengers—Fatal Accidents Act—Damages.

Action under the Fatal Accidents Act, by the daughter of a man who was killed by a train of the defendants, to recover damages for his death.

The action was tried with a jury at Chatham. The jury failed to agree; and it was arranged by counsel that the trial Judge should dispense with a jury and dispose of the case upon the evidence taken.

Gideon Grant and M. F. Pumaville, for the plaintiff.

Angus MacMurchy, K.C., and A. Clark, for the defendants.

MIDDLETON, J., in a written judgment, said that the deceased, an old gentleman of 83, was a passenger on the defendants' railway from Kent Bridge to Bothwell on the 3rd January, 1916. The train was a local one, and the conductor had orders to take the siding at Bothwell to allow a fast train to pass. The train drew up at the entrance to the siding near the station, and, when the switch was opened, entered it and stopped opposite the station. Pesha alighted on the side nearest the station and stepped upon the main line, which was between the train and the station. He was struck by the fast train and killed.

Unless there was a warning to the deceased, not to alight until the train was drawn up to the platform, it could not be contended that there was not an invitation to alight.

The trainman went through the car and called "Bothwell next station," and the train, after stopping at the switch to take the siding, drew up in front of the station with the main line between it and the platform. Express and luggage were removed and outgoing parcels placed on the train by the station-agent.

The conductor said that, when the train was about to take the switch, seeing Pesha on the platform, he said to him: "Do not get off here; we are going into the siding to meet a train, and we are going to back up and come to the platform."