

146, in my opinion, applies, and the petitioner had up to that time been unable to effect "prompt personal service."

(3) As to the third objection, the service was, in fact, in accordance with the order made. It is not open to me now to interfere. If the order was not made in the proper exercise of a judicial discretion, and if that is the subject of appeal, the matter will be rightly disposed of by the appellate Court.

In the Montmagny Dominion Election Case, 15 S. C. R. 1, defective service was set up as one of the preliminary objections. The objection was dismissed by the Superior Court of Lower Canada, and allowed on appeal by the Supreme Court of Canada. That case goes a long way against what may be called substitutional service. The decision in that case, however, is based on art. 57 of the Code of Civil Procedure in Quebec, and there is no such provision as in our Rule 146. There was no order allowing substitutional service in that case.

For the reasons given, I must disallow the preliminary objections. Costs in the matter of the petition.

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DECEMBER 22ND, 1908.

DIVISIONAL COURT.

GIOVINAZZO v. CANADIAN PACIFIC R. W. CO.

*Master and Servant — Injury to Servant and Consequent Death—Workmen's Compensation Act—Notice Prescribed by sec. 9—Reasonable Excuse for Failure to Give—Administrator Suing under Fatal Accidents Acts—Letters of Administration—Reasonable Promptitude—Actionable Negligence—Workman Run over by Train in Railway Yard—Findings of Jury—Sec. 3, cl. 5, of Act—Licensee—Statutory Duty—Defective System—Sec. 3, cl. 1—New Trial—Amendment of Pleadings.*

Appeal by defendants from judgment of CLUTE, J., upon the findings of a jury, in favour of plaintiff in an action by the administrator of the personal estate of Michelo Giovinazzo, deceased, to recover damages for the killing of the intestate, who was an employee of the defendants, owing to their negligence.