

The appeal must, I think, be allowed, and the action dismissed: a conclusion which seems to be quite agreeable with the view of the learned trial Judge, though he allowed the case to go to the jury, and gave effect to their findings.

Appeal allowed with costs—if exacted.

DECEMBER 31st, 1908.

C.A.

BRILL v. TORONTO R. W. CO.

Street Railways—Injury to Person Crossing Track—Negligence—Excessive Speed—Findings of Jury—No Reasonable Evidence to Support—Dismissal of Action—Person Injured at Fault.

Appeal by defendants from the judgment of CLUTE, J., upon the findings of a jury, in favour of the plaintiff Sarah Brill for the recovery of \$1,150 damages and in favour of the plaintiff Isaac Brill for the recovery of \$100 damages for an injury sustained by the former by the alleged negligent operation of an electric car of defendants upon Yonge street in the city of Toronto, and for loss sustained by the latter owing to such injury.

D. L. McCarthy, K.C., for defendants.

G. R. Geary, K.C., for plaintiff.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, JJ.A.), was delivered by

GARROW, J.A.:—In the morning of 11th March, 1908, the plaintiff Sarah Brill was crossing Yonge street from east to west, a short distance to the south of the intersection of Queen street. She had to pass around the rear of a street car proceeding north, and had reached the westerly line of track, when she was struck by a car going south upon that track, and very severely injured.

The acts of negligence complained of in the statement of claim were: running the car at too high a rate of speed; not giving warning of its approach; not taking proper precautions; and not having proper appliances to give notice of danger and to avert such danger.