

The judgment in favour of the plaintiff will, therefore, be reduced to this sum, with County Court costs of trial. The costs of the appeal will be to the defendant, who has succeeded to a substantial extent.

The judgment will be stayed for the remainder of the six months mentioned in the judgment of the trial Judge, to enable the defendant to proceed on his counterclaim; and, in the event of his not doing so, it will then be dismissed.

FEBRUARY 3RD, 1913.

LONG v. TORONTO R.W. CO.

*Street Railways—Injury to and Death of Person Crossing Track
—Negligence—Contributory Negligence—Findings of Jury
—Evidence—Cause of Injury—Recklessness of Deceased.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., upon the findings of a jury, in favour of the plaintiff, Mary Long, in an action for damages for the death of her husband, Francis Long, who was killed by one of the defendants' cars upon Queen street, in the city of Toronto, on the evening of the 3rd April, 1912. The jury assessed the plaintiff's damages at \$4,000, and judgment went in her favour for that sum and costs.

The appeal was heard by MULOCK, C.J.Ex., SUTHERLAND, MIDDLETON, and LEITCH, JJ.

H. H. Dewart, K.C., for the defendants.

W. E. Raney, K.C., for the plaintiff.

The judgment of the Court was delivered by MULOCK, C.J.:—There is evidence to the following effect. Shortly after eight o'clock in the evening, the deceased endeavoured to cross from the south to the north side of Queen street, proceeding in a slightly north-easterly direction, and, when he had about reached the north rail of the north track, was struck on the legs by the north-west corner of the car-fender of a west-bound car. The effect of the impact was to take his feet from under him, causing his body to fall towards the car to the pavement—he being killed either by striking the car or the pavement.

At the place where the deceased was crossing Queen street,