

Audette, J.]

[March 25.

IN THE MATTER OF THE PETITION OF RIGHT OF ALEXIS BRILLANT.

*Negligence—Government railway—Crossing—Omission by railway employees to comply with requirements of sec. 37 of the Government Railway Act—Faute commune.*

B., the suppliant, in the afternoon of a clear winter day, was driving a horse attached to a double sleigh along a road crossed by the Intercolonial Railway. He was followed by his son, aged eleven, who was driving a horse attached to a small single sleigh. The view of the track on the north-eastern side, until arriving within 25 feet of it, was obstructed by wood-piles. After passing the wood-piles, B. looked to the south-west to see if any train was coming down, but did not look in the opposite direction, i.e., from which a train was coming. When he was in the act of crossing the track, he heard the alarm signal of a train coming upon him from the north-east at about thirty to forty feet away; then, but not before, the engine-driver sounded an alarm signal. B., by urging his horse, was just able to clear the train, but the boy was unable to stop his horse and sleigh, with the result that the train struck them, killing the horse, smashing the sleigh and severely injuring the suppliant's son. The train hands had omitted to sound the whistle and ring the bell on the approach to the crossing, as provided by sec. 37 of the Government Railways Act.

*Held*, that the proximate or determining cause of the accident was the negligent omission of the railway employees to comply with the provisions of the said section; but, inasmuch as the conduct of B. in not looking both ways before entering upon the track, while not contributing to the proximate or determining cause of the accident, yet amounted to negligence justifying the application of the doctrine of *faute commune* under the law of Quebec.

2. That, upon the facts, the suppliant was entitled to recover against the Crown, under sec. 20 of the Exchequer Court Act, such damages as might be fixed conformably to the above-mentioned doctrine, having regard to the nature and extent of the negligence of the respective parties.

3. The doctrine of *faute commune* does not obtain under the law of Quebec where the claimant contributes to the proximate or determining cause of the accident.

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