

DECEMBER 23RD, 1913.

*RAMSAY v. TORONTO R.W. CO.

*Street Railway—Injury to and Death of Person Crossing Track
—Negligence—Contributory Negligence—Findings of Jury
—Nonsuit—Reversal on Appeal.*

Appeal by the plaintiff, the administrator of the estate of Jean Spence, deceased, from the judgment of LENNOX, J., ante 20, dismissing an action brought to recover damages for her death by reason of the negligence of the defendants, as alleged.

The jury made findings mostly in favour of the plaintiff, which are set out at pp. 21 and 22, but the trial Judge was of opinion that, notwithstanding the findings, there should be a nonsuit.

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

J. P. MacGregor, for the appellant.

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

The judgment of the Court was delivered by MULOCK, C.J.Ex., who, after setting out the facts and the findings of the jury, first referred to the answer of the jury to question 5, which was: "If Jean Spence, or her sister, had been on the alert or keeping a look-out for cars and vehicles as they crossed the street, would the accident, in your opinion, have occurred?" And the answer was: "It might have." The learned Chief Justice then proceeded:—

The answer to question 5 affirms nothing, and may be disregarded: *Rowan v. Toronto R.W. Co.* (1899), 29 S.C.R. 717; *Flannery v. Waterford and Limerick R.W. Co.*, I.R. 11 C.L. 30.

The substance of the jury's findings is, that the death of the deceased was caused by the negligence of the defendant company in operating their car at an excessive rate of speed and in failing to warn her of the approaching car, and that the deceased, having looked up and down the street and seen no car, had exercised reasonable care.

With respect, I am unable to agree with the learned trial Judge's disposition of the case in directing a nonsuit, on the

*To be reported in the Ontario Law Reports.