

fendant is not entitled to any part of the costs of the appeal, which should be made costs in the action to the plaintiff only. The latter was responsible for the issue of the judgment in proper form, and is not without blame for the omission to follow the directions of the learned Chief Justice, and he should only be allowed the costs of the appeal in case of his ultimate success in the action.

If any difficulty arises in framing the variation of the judgment, it may be spoken to in Chambers.

MEREDITH, J.A., gave reasons in writing for the same conclusion.

OSLER, GARROW, and MACLAREN, JJ.A., also concurred.

MAY 5TH, 1909.

C.A.

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 Act — Letters of Administration—Ignorance of Law—Reasonable Promptitude—Actionable Negligence — Workman Run over by Train in Railway Yard—Findings of Jury—Licensee—Statutory Duty—Defective System.

Appeal by defendants and cross-appeal by plaintiff against an order of a Divisional Court, ante 24, granting a new trial, on appeal by the defendants from the judgment at the trial before CLUTE, J., and a jury in favour of the plaintiff in an action by him, as administrator, to recover damages caused by the death of his brother Michele Giovinazzo, caused, it was said, by the negligence of the defendants.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, MEREDITH, JJ.A.

I. F. Hellmuth, K.C., and Angus MacMurchy, K.C., for defendants.

H. L. Dunn, for plaintiff.