

Several railway men of experience were in the witness box—men who had experience—and they all, with the utmost unanimity, said that the operation in question was being carried on at the time of the accident in the usual way, and with the usual and sufficient help, and there is no evidence to the contrary. Moreover, what was being done was according to the usual practice in the defendants' yard, with which the deceased, who had been in the yard for a long time, was perfectly familiar; it was, indeed, the daily routine, without an exceptional circumstance.

There was, in my opinion, a total lack of evidence proper for the jury in support of the only finding of negligence which appears; and, for this reason, the appeal should be allowed and the action dismissed, both with costs, if demanded.

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APRIL 18TH, 1910.

WALKER v. CANADIAN PACIFIC R. W. CO.

*Railway—Injury to Passenger Alighting from Train—Absence of Invitation—Evidence.*

Appeal by the defendants from the judgment at the trial in favour of the plaintiff, upon the findings of a jury, in an action by a passenger upon the defendants' railway to recover damages for injuries sustained by being thrown under a car while alighting from a train at Dundalk, by reason, as he alleged, of the defendants negligently starting the train without giving him time to alight.

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

I. F. Hellmuth, K.C., and Shirley Denison, for the defendants.  
W. E. Raney, K.C., and I. B. Lucas, K.C., for the plaintiff.

The judgment of the Court was delivered by OSLER, J.A.:—  
In my opinion, the plaintiff has failed to prove that there was any negligence in the management of the train.

The accident happened on the 13th July, 1908. The action was not brought until the 26th June of the following year. The plaintiff's case, as put forward at the trial, differing, as regards the negligence relied upon, from the way in which it had been alleged in the statement of claim, was that he was travelling on a long excursion train consisting of 16 cars going south from Owen