What constitutes reasonable excuse must depend upon the circumstances of each particular case, and a reasonable excuse will be inferred where, as here, there is the notoriety of the accident, the knowledge of the employers of the injury, which resulted in death, and its cause, and of a claim having been made on them by the deceased's representative, which they had stated they would take into their consideration, but to which no final answer had ever been given.

In an action against a railway company for alleged negligence it appeared that the deceased was killed by being run over while shunting cars. The evidence showed that the space between the two sets of tracks in the defendants' yard was dangerous by reason of an accumulation of snow and ice thereon, but that the tracks themselves were in good condition, and it was merely a matter of conjecture whether, at the time of the accident, the deceased was on the tracks themselves or on the space between them.

Held, that under these circumstances the accident could not be said to be due to the defendants' negligence, and the plaintiff's action failed.

Chrysler, K.C., for appellants. *Fripp*, for respondent.

From Ferguson, J.] [Oct. 9.

MUTCHMOR *v.* WATERLOO MUTUAL FIRE INS. CO.

Fire insurance—Conditions—Prior and subsequent insurance—Substitution of policies—Implied assent—Adjustment of loss—Waiver.

In an application for insurance, particulars of prior insurance in two other companies of $4,000 in each company were given, but in the policy in question prior insurance for only $4,000 was assented to, neither company being named. The defendants pleaded as a breach of the statutory condition non-disclosure of prior insurance for $4,000 in one of the two companies.

Held, that the plea must be read strictly and without amendment, and that so read the assent in the policy to insurance of $4,000 might be treated as an assent to the prior insurance complained of in the plea; and *semble*, that had the defendants not intended to assent to the prior insurance of $8,000 they would have been bound under the second statutory condition to point out in writing the particulars wherein the policy differed from the application.

Held, also, that to a subsequent insurance for $4,000 in another company in substitution for a prior insurance to that amount in one of the two companies mentioned in the application, the assent of the defendants was not necessary.

Assent, express or implied, to subsequent insurance is sufficient even if given after the loss has occurred. In this case such assent was held to be