

clusion upon the evidence is that the accident was caused by the plaintiff Sarah Brill's own imprudence in passing from behind the north-bound car and going upon the westerly track without looking to see where the car was which she had seen standing above Queen street. No excuse is offered for this very apparent act of negligence on her part, which, if it was not the sole cause, at least contributed to cause the injury, and against which, as the jury found, the motorman was powerless to protect her after he saw her.

The appeal should be allowed and the action dismissed with costs, if the defendants ask them.

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DECEMBER 31ST, 1908.

C.A.

LAPPAGE v. CANADIAN PACIFIC R. W. CO.

*Master and Servant — Injury to Servant and Consequent Death—Negligence—Findings of Jury — Fault of Foreman of Works—Workmen's Compensation Act — Defective System — Common Law Liability — Railway — Damages — Reduction — Apportionment—Costs.*

Appeal by defendants from judgment of CLUTE, J., upon the findings of a jury, in favour of plaintiffs.

The action was brought under the Fatal Injuries Act, R. S. O. 1897 ch. 166, by the widow and infant child respectively of one William George Lappage, a workman in the defendants' employment, who it was alleged was killed while engaged in his employment owing to the negligence of defendants.

I. F. Hellmuth, K.C., and G. A. Walker, for defendants.

E. E. A. Du Vernet, K.C., A. H. F. Lefroy, K.C., and G. W. P. Hood, for plaintiffs.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, MACLAREN, JJ.A.), was delivered by

GARROW, J.A.:—Deceased's occupation was that of pipe-fitter, and at the time of his death he was engaged in repairing the pipes under a car in the defendants' yard at Toronto Junction, and, while he was under the car, it fell on him and killed him.