

FAWCETT *et al.* v. THE CANADIAN PACIFIC  
RAILWAY COMPANY.

1902

\*Mar. 10.

\*May 15.

*Railways—Operation—Defective machinery—Disobeying orders—Contributory negligence.*

Judgment appealed from (8 B. C. Rep. 393) affirmed.

APPEAL from the judgment of the Supreme Court of British Columbia, (1), affirming the judgment of Irving J. at the trial, ordering that the plaintiff should be non-suited and dismissing the action with costs.

The action was by the personal representatives of an employee of the company to recover damages for his death which occurred while he was performing his duty as a conductor on their railway. Deceased was using a defective brake on a passenger car of his train while it was in motion. The want of a nut on the head of the brake-mast allowed the brake-wheel to fly off and, in consequence, deceased was thrown off the platform of the car and, falling under the wheels, he was run over and killed. The defence was that deceased was obliged, as part of his duty, to examine all the cars and see that they were in good order before starting his train and that by neglecting to see that the nut was in place before leaving the station he had disobeyed the running rules, and been the cause of his own death. At the trial the case was withdrawn from the jury by Irvine J., who ordered judgment to be entered for the defendant for reasons stated at page 394 of the report in the court below and, on appeal to the full court his judgment was

\*PRESENT:—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

(1) 8 B. C. Rep. 393.

1902 affirmed. The plaintiffs then appealed to the Supreme  
FAWCETT Court of Canada.  
v.  
CANADIAN After hearing counsel for the parties the court  
RWAY. Co. reserved judgment and, on a subsequent day, dis-  
missed the appeal with costs for the reasons given in  
the court below.

*Appeal dismissed with costs.*

*Garrow K.C.* for the appellants.

*Davis K.C.* and *Macdonald K.C.* for the respondents.

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