

# The Ontario Weekly Notes

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No. 3

## COURT OF APPEAL.

SEPTEMBER 27TH, 1912.

ZUFELT v. CANADIAN PACIFIC R.W. CO.

*Railway—Injury to and Death of Persons Crossing Track—  
Negligence — Findings of Jury — Damages — Proof of—  
Quantum—Second Trial—Appeal.*

Appeal by the defendants from the judgment of TEETZEL, J., in favour of the plaintiffs for the recovery of \$2,000, upon the findings of a jury, at the second trial of the action.

The facts are stated in the report of the judgment of the Court of Appeal, 23 O.L.R. 602, 2 O.W.N. 1063, directing a new trial.

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

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

W. M. Douglas, K.C., and G. F. Mahon, for the plaintiffs.

GARROW, J.A.:—The case was in this Court before, when a new trial was directed. It has now been tried again; and, for the second time, upon essentially the same evidence, a jury has found in favour of the plaintiffs, while reducing the damages awarded at the former trial.

The defendants still complain, saying that the verdict is contrary to the evidence and that the damages are excessive.

I do not see how we can properly interfere on either ground.

It cannot, I think, be said that there was no evidence to go to the jury; and, while I may think—as I certainly do—that the preponderance of testimony is in favour of the defendants, I cannot substitute my opinion for that of the jury or