

ity, and stated that he would, if the case were to be determined upon the evidence as it now stood, allow the appeal and dismiss the action. In view, however, of the peculiar circumstances of the case, he was in favour of granting a new trial to the plaintiffs, if they chose, within a month, to take it—costs of the former trial and of this appeal to be costs in the action to the defendants in any event.

APRIL 21ST, 1911.

ZUFELT v. CANADIAN PACIFIC R.W. CO.

Railway—Negligence—Efficient Headlight on Snow Plough—Statutory Signals—Excessive Speed—Answers of Jury—Verdict of Ten Jurors under sec. 108 of Judicature Act—Same Ten not Agreed in Every Instance—Meaning of “Village” in Railway Act, sec. 275—New Trial—Costs.

Appeal by the defendants from the judgment of MAGEE, J., at the trial with a jury, awarding the plaintiff \$3,000 and costs. This was an action by the father and mother of Ernest Edgar Zufelt and Ida Marion Zufelt, who while driving on Zorra street, in the village of Beachville, and crossing the defendants' railway, were struck by a snow plough attached to a train, and received injuries which resulted in their death, which accident is said to have been caused by the defendants' negligence.

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

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

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

MOSS, C.J.O.:—The plaintiffs assigned four acts of negligence or breaches of duty on the part of the defendants, whereby the injuries were inflicted which caused the death of the plaintiffs' son and daughter.

These were: (1) failure to properly protect the crossing at which the accident occurred; (2) want of an efficient headlight on the snow-plough preceding the locomotive engine; (3) failure to give the statutory signals by bell and whistle on approaching the crossing; and (4) running at excessive speed through a thickly peopled portion of the village of Beachville.