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COURT OF APPEAL.

SEPTEMBER 27TH, 1912.

ZUFELT v. CANADIAN PACIFIC R.W. CO.

4 O. W. N. 39.

Negligence—Railways—Level Crossing—Collision with Snow-plough—Insufficient Headlight—Excessive Speed—Absence of Statutory Signals—Evidence—Damages—Verdict of Ten Jurors—Special Jury.

Action for damages under the Fatal Accidents Act by a father and mother for the death of their son and daughter by reason of defendants' alleged negligence. The deceased were killed in the village of Beachville, when driving across defendants' railway, by collision with a snow-plough of defendants. The negligence complained of was want of sufficient head-light on the snow-plough, failure to sound whistle or bell, and unreasonable speed in a thickly populated locality. The Court of Appeal (19 O. W. R. 77; 23 O. L. R. 602; 2 O. W. N. 1063), set aside a judgment for plaintiffs for \$3,000, upon the findings of a jury at a former trial, and directed a new trial, on the ground that some of the jury's findings were perverse, and others inconclusive. At the second trial, at defendants' instance, a special jury was summoned.

TEETZEL, J., on the findings of the jury at the second trial, entered judgment for plaintiffs for \$2,000 and costs.

Court of Appeal (MEREDITH, J.A., dissenting), dismissed appeal from above judgment, with costs.

Per MEREDITH, J.A.:—"There was no evidence of any pecuniary damage to plaintiffs to go to jury."

An appeal by the defendants from a judgment of HON. MR. JUSTICE TEETZEL, 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 of the case are reported in the judgment of the Court of Appeal, 23 O. L. R. 602; 19 O. W. R. 77; 2 O. W. N. 1063, directing a new trial.

The second appeal to the Court of Appeal was heard by HON. SIR CHARLES MOSS, C.J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, and HON. MR. JUSTICE MEREDITH.