

judgment of CLUTE, J., upon the findings of a jury entered on the 24th November, 1911, and directing that there should be a new trial of the action or that, in the event of the plaintiff accepting the sum of \$2,000 paid into Court by the defendants, judgment be entered for the plaintiff for that sum.

The appeal was heard by LORD ATKINSON, LORD SHAW and LORD MOULTON.

Sir Geo. C. Gibbons, K.C., and Geo. S. Gibbons, for the appellants.

Sir Robert Finley, K.C., A. McMurchy, K.C., and Geoffrey Lawrence, for respondent railway company.

LORD ATKINSON:—The action was brought by the plaintiff, as administratrix of the estate of Gilbert Jones, deceased, for damages under the Ontario Statute R. S. O. 1897, ch. 166, corresponding to the Fatal Accidents Act in England, in respect of the death of the said Gilbert Jones, who was on the 14th February, 1911, killed in a collision at Guelph Junction between a snow-plough belonging to the defendants and a train belonging to the defendants which was standing in a siding at the said junction. A claim was also made under the Ontario Workmen's Compensation for Injuries Act, liability for which was admitted.

This snow-plough is used to clear the railway line of snow. It is a high truck or waggon furnished in front with metal scrapers, which can be raised or lowered by mechanism worked from the inside, and is also furnished with two wings, one on each side, which can by a similar mechanism be spread out or folded to the sides of the waggon as required. The function of the scraper is to lift the snow off the ground; the function of the wings is to throw it, when raised, off the track. The plough is built with a cupola, as it is styled, on its roof, in which windows are fitted both at the front and at the sides, through which the person in the cupola can get a clear view of what is in front and at the sides of the lines of railway. The plough is also connected by a cord with the engine, by which the steam whistle on the engine can be sounded. The plough placed in front of the train is pushed from behind by a locomotive engine and can be driven at a rate of 20 miles an hour or more.