

the same ten were not agreed in every instance, is not free from difficulty.

At first sight it may appear strange, and even anomalous, that where the agreement of ten is substituted for that of the twelve there should not be the same unanimity on every question that was formerly required of the twelve. But obviously the object of the legislation was to end or shorten litigation, and to avoid the necessity for a further trial in consequence of disagreement. It is doubtful if much advance to that end is made if the failure to obtain the agreement of the same ten to every question is to have the same effect as a disagreement under the former practice. Sub-section 2 of sec. 108 was apparently enacted for the purpose of avoiding the inconvenience and confusion likely to arise in a case such as the present, where a considerable number of questions were submitted, if the agreement in every answer of the same ten was to be deemed a prerequisite to their giving the verdict, or answering the questions submitted to them. In my opinion that is not the effect of the section.

There will be a new trial, the costs of the former trial and of the appeal to be in the action.

GARROW and MACLAREN, JJ.A., each gave reasons in writing for the same conclusion, in which they dealt, amongst other matters, with the argument of the appellants' counsel that the word "village" in sec. 275 of the Railway Act means an incorporated village, which Beachville was not, stating it as their opinion that there was nothing in the Act to indicate that the public in an incorporated village were intended to be given greater protection than in one not incorporated.

MEREDITH, J.A., gave reasons in writing, in which he concurred with the other members of the Court in allowing the appeal and directing a new trial, but was of the opinion that the costs of the appeal and of the last trial should be to the defendants in any event. He also expressed the opinion that it was necessary that the same ten jurors should have been agreed upon some set of facts entitling the plaintiffs to recover, before any verdict or judgment could be given in their favour.