

## SUPREME COURT OF CANADA.

APRIL 9TH, 1910.

CROUCH v. PERE MARQUETTE R<sub>w.</sub> CO.

13 Can. Ry. Cas. 247.

*Railway Crossing—Accident at—Husband and Daughter Killed—No Sign Board—Evidence to Justify Jury's Findings—Railway Act, ss. 242, 243, 274.*

Plaintiff, the widow of Samuel Crouch, brought action claiming unstated damages for the death of her husband and daughter, who were killed while driving across the defendants' line of railway about seven o'clock on evening of January 11th, 1908, through the alleged negligence of defendants. At the trial it was proved: (1) that defendants had omitted to place any signboard at the crossing; (2) excessive grade in highway approaching the crossing. The jury found the above to be negligence, and also found that defendants failed to give statutory signals and negatived contributory negligence. TEETZEL, J., entered judgment for plaintiff for \$1,200 damages, awarded by the jury.

DIVISIONAL COURT dismissed defendants' appeal. COURT OF APPEAL *held*, 15 O. W. R. 694; 1 O. W. N. 637, that there was evidence which could not have been withdrawn from the jury, and dismissed defendants' appeal. MEREDITH, J.A., dissenting. SUPREME COURT OF CANADA affirmed above judgments.

*Per* GIROUARD & IDINGTON, JJ., the absence of the signboard was the cause of the accident.

*Per* DUFF J.—The failure to give the statutory signals caused the accident.

*Per* DAVIES & ANGLIN, JJ. (*dissenting*).—As no one saw the accident, the proximate cause thereof was a guess or conjecture.

An appeal by the defendants from a judgment of the Court of Appeal for Ontario, 15 O. W. R. 694; 1 O. W. N. 637, affirming a judgment of Divisional Court affirming a judgment of HON. MR. JUSTICE TEETZEL, at the trial in favour of the plaintiff, and directing judgment to be entered for the plaintiff upon the findings of a jury.

The facts are fully set out by HON. SIR WM. MEREDITH, C.J.C.P., in delivering the judgment of the Divisional Court.

Stone, Gundy & Brackin, for the appellants.

L. J. Reycraft, for the respondent.

HON. SIR WM. MEREDITH, C.J.C.P. (24th September, 1909):—This is an appeal by the defendants from the judgment pronounced by Mr. Justice Teetzel on the 7th May last, after the trial of the action before him, sitting with a jury, on the 6th and 7th days of that month.