

The case of *Phillips v. Grand Trunk R. Co.*, 1 O. L. R. 28, seems expressly to govern. The trial Judge, in that case, bases his decision in part upon there being clear and undisputed evidence of contributory negligence—not necessary for jury to find it—no dispute about it.

The Division Court judgment, delivered by Street, J., is upon the ground, in part, that the plaintiff had not shewn that it was the defendants' negligence that caused the accident. I quote from p. 33:

"It is necessary, however, that the plaintiff should shew that the defendants' negligence caused the accident, and, in this, I think he has failed. He chose to walk in a place of extreme danger, that is to say, between the rails, when a place of perfect safety, that is to say, in the space between the tracks and off the line of rails, was open to him and known to him. Therefore, the accident was caused, not by the negligence of the defendants, but by his own reckless act."

There must be judgment for the defendants, dismissing the action, with costs, if costs demanded.

Twenty days' stay.

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SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

APRIL 22ND, 1914.

RUDDY v. TOWN OF MILTON

6 O. W. N. 253.

*Municipal Corporations—Action for Damages by Flooding—Inadequate Culvert—Act of Third Party — Obstruction of Natural Watercourse — Negligence — Continuing Damage—Mandatory Order to Defendants to Repair—Damages—Costs.*

MIDDLETON, J., 25 O. W. R. 410; 5 O. W. N. 525, gave plaintiff \$100 damages against a municipal corporation for the flooding of her house by reason of the construction by the municipality of an inadequate culvert, and refused to award any damages on the basis of a continuing damage, but ordered the municipality to repair the culvert in question.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment.

Appeal by the defendant municipality from a judgment of HON. MR. JUSTICE MIDDLETON, 25 O. W. R. 410.