

the complaint has been preferred by or on behalf of the person aggrieved. Where a summons is issued by a peace officer of his own motion, and the person aggrieved attends the hearing and gives evidence, the right of action remains.

Judgment of a Divisional Court reversed.

*W. Nesbitt*, and *W. J. Clark*, for appellant. *Delamere*, Q.C., and *F. C. Snider*, for respondent.

From Armour C.J.] *HESKETH v. CITY OF TORONTO*. [Nov. 15.

*Municipal corporations—Fire brigade—Negligence—Damages.*

A municipal corporation is liable in damages when the death of a person is caused by the negligence, while in the performance of their duty, of members of a fire brigade organized and maintained by it. Judgment of ARMOUR, C.J., affirmed.

*Fullerton*, Q.C., and *W. C. Chisholm*, for appellants. *Geo. Wilkie*, for respondent.

From MacMahon, J.] *HENDERSON v. CANADA ATLANTIC R. W. CO.* [Nov. 15. *Railways—Highway crossing—Statutory warning—Damages—Mental shock.*

The statutory warning required to be given where a line of railway crosses a highway on the level is for the benefit not only of persons crossing the line of railway, but also of persons lawfully using the highway, and approaching the line of railway.

Where, therefore, owing to the failure of the defendants to give the statutory warning, or any equivalent warning, the plaintiff drove close to their line of railway, and his horses were frightened by a passing engine, and injury resulted, he was held entitled to recover.

Damages for "mental shock" are not recoverable.

*Victoria Railway Commissioners v. Coultas* (1888), 13 App. Cas. 229 followed.

Judgment of MACMAHON, J., affirmed.

*Osler*, Q.C., and *Chrysler*, Q.C., for appellants. *W. Nesbitt*, and *Glyn Osler*, for respondent.

From Drainage Ref.] *McCULLOCH v. TOWNSHIP OF CALEDONIA*. [Nov. 15.

*Drainage—Invalid by-law—Damages—Charging assessed area.*

Upon the receipt of a petition from certain property owners the municipal council of a township passed a provisional by-law for the construction of drainage works affecting land in three townships, and directed an engineer to make the usual report. The engineer made his report and assessed the cost of the work against lands in three townships, but on the matter coming up before the Court of Revision it was found that the petition had not been signed by the necessary number of owners. The council, then, without any new petition or engineer's report, and without notice to the other townships, passed a by-law for the construction of the works, adopting with some changes the report already made: