concrete bed. It was not pretended that defendants broke up more of the pavements than was necessary to enable them to remedy the condition of the rails, caused by the negligence and breach of duty of plaintiffs, or that what was done by them was done negligently. Had defendants restored the pavements to their original condition at their own cost, they could have recovered from plaintiffs the expense they would have been put to, and it follows that plaintiffs are not entitled to recover from defendants the cost of these repairs. Second claim dismissed. No costs to either party.

JOHNSTON V. VILLAGE OF POINT EDWARD.

Alteration of Line of Road—Removal of Bridge on Old Road—Negligence of Corporation in Not Maintaining Barriers—Absence of Warning to Travellers.

Judgment in action tried without a jury at Sarnia. Plaintiff, who was driving in a buggy drawn by a single horse from Point Edward to Sarnia along the main travelled road, on the night of 22nd November, 1902, a dark night, drove into a canal which crossed the road at right angles, and he sued defendants to recover damages for the injuries he sustained, which, he alleged, were caused by the negligence of defendants in removing a bridge which had existed for many years over the canal in the line of the road, without providing and maintaining any sufficient guard or barrier to prevent persons using the road from driving into the canal. Held, that the evidence was sufficient to establish that the *locus in quo* was part of a highway called "the diverted road," under the jurisdiction and control of defendants, which it was their duty to keep in repair. In August, 1902, the corporation of the Town of Sarnia, with the consent of defendants, made a change in the line of "the diverted road," the effect of which was to move the travelled way from its then position a short distance to the east of it, and to carry the roadway across the canal by means of a covered sewer pipe culvert, and to discontinue the use of the former travelled way from a point near the north end of the diverted way to a point a little distance east of the bridge which was removed. No barrier or other guard was placed across the former travelled way at the point where the change in alignment began at the north end, but one was erected across it, about opposite the park gate, extending from the new culvert to within about ten feet of the park fence. This barrier was spoken of as a temporary one, and was insufficient for the purposes for which it was intended. There was a conflict of evidence as to whether it had been kept standing from the time it was put up until the time of the accident. Held, that the evidence given for plaintiff was to be preferred, and it showed that the barrier was often, in part at least, overthrown, and that for at least two days before the accident it was down in part so as to be quite insufficient to prevent persons driving along the old roadway in the dark from driving into the canal. Defendants were guilty of negligence in not providing a sufficient barrier or guard, and they were also negligent, knowing or having the means of knowing, if they had taken any reasonable care, that the barrier which had been erected was often overthrown, in not either being more vigilant in watching as to its condition, or in not, as they after the accident did, replacing it by a sufficient fence. Plaintiff was not chargeable with negligence for, although he had driven over the culvert in going to Point Edward on the same evening, he said he did not notice that the bridge had been removed, or that any change had been made in the road; when he was returning the night was dark, and it was the most natural thing that his horse should follow the old way, there being nothing at the point of divergence to prevent persons from continuing. Judgment for plaintiff for $400 with costs.

RE OTTAWA ASSESSMENT APPEALS.

Income of Ex-Civil Servants Not Assessable—Income Earned Outside the Province Not Liable to Assessment and Taxation—Exemption of Personalty to the Extent of Debts Due in Respect Thereof.

Judgment on these appeals was handed down recently by County Judge Liddell. The first case arose from the appeals of a number of superannuated civil servants against the assessment of their incomes from such superannuation.

The Judge holds that the allowance of retired civil servants of the Federal Government is not taxable for local municipal purposes. This judgment applies to the appeals of Col. Tilton, Col. White, R. Sinclair, and others. Another point decided by the Judge is as regards the income assessment of Ottawa residents, whose incomes are earned in Hull. In respect to this point the Judge holds "that the income of a resident of Ontario, wholly derived from earnings outside the Province, is not liable to taxation for local municipal purposes under any Act or authority of the Local Legislature."

An important ruling is also made relative to the assessment of personal property, the point in question arising in the city's appeal from the decision of the Court of Revision holding as non-assessable the $10,000 personalty valuation of the Blythe estate, whose original appeal was prosecuted by the Cross Company. Judge Liddell holds "that so much of the personal property of any person or corporation as is equal to the just debts owed by such person or corporation on account of such property is exempt from taxation for local municipal purposes, even though the vendor of the same may have been paid the purchase price by money raised for the purpose by the purchaser through a third party, and money so raised should be deducted as a debt on account of such property."

TOWNSHIP OF INNISFIL V. GRAND TRUNK RAILWAY COMPANY.

Drainage on Railway Lands—Liability of Railway for Flooding of Private Property.

This case arose out of the alleged causing of damage by washout on the 11th concession line of Innisfil, near Lockhart's farm, on the 4th of July, 1902. It was first tried in June last by County Judge Boys with a jury and a verdict obtained by the plaintiffs for $35.00 and costs. The defendants applied for and obtained an order for a new trial and the case came on again for trial with a new jury, when the Company fared even worse than before, the plaintiffs on this occasion obtaining a judgment for $50.00 and all costs. The case is interesting as one involving the vexed question of how far a railway company is to provide an outlet for watercourses, at times when an exceptional storm is said to have occurred. The Company contended that the 4th of July rainstorm was of such an exceptional character that they could not be expected to provide for it, and that in any case there was no "water course" across Lockhart's farm, and they need not have a culvert at all.

BOURQUE V. CITY OF OTTAWA.

Claim on Contract—Construction of—Damage to Plaintiff by Discharge from Sewers Unknown to Him—Non-Disclosure.

Judgment in action tried without a jury at Ottawa. Action for the contract price of certain work done by plaintiff, and for damages arising thereout. Two questions remained to be disposed of, all the others having been dealt with during the progress of the trial: (1) The