

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.] FOX v. CORNWALL STREET RY. CO. [Nov. 10.

Duty as to highways—Municipality or company—Rails flush with street—Wearing down of highway.

This was an appeal by the plaintiff from the judgment of ANGLIN, J. (ante, p. 159). He had held that the municipality was liable for damages sustained owing to the wearing down of that portion of the highway adjacent; but his attention was not called on that occasion to R.S.O. 1897, c. 208, s. 23, which provides that unless otherwise agreed upon between the company and the municipality, the company shall at their own expense keep clean and in proper repair the streets between the rails and for 18 inches on each side of the rails.

Held, that as the accident was evidently caused by the defendants' neglect of their obligation in this respect, and the plaintiff was therefore entitled to judgment.

Appeal allowed.

G. I. Gogo, for plaintiff. Middleton, K.C., and C. H. Cline, for defendants.

Full Court.] [Nov. 10.

JOHNSTON v. DOMINION OF CANADA GUARANTEE & ACCIDENT
INS. CO.

Accident insurance—Conditions of policy—Affirmative proof of death—Notice of death—Time—Waiver—Forfeiture.

This was an appeal by the defendants from the judgment of BOYD, C. The action was brought under a contract in an accident insurance policy in favour of deceased and his representatives. One of the terms of the policy was that immediate written notice of any "accident or injury" should be given to the insurers at Toronto; and another was that unless "affirmative proof" of death should be so furnished within 13 months no