

they assumed to do under sub-sec. 2 of sec. 118 of the Municipal Act, R. S. O. ch. 223. The difficulty arises in grafting the provisions of the Municipal Amendment Act, 1898, as to the election of councillors of towns having a population of not more than 5,000, upon the provisions of the Municipal Act. Sub-section (1) of the section added by the Act of 1898 (71a) had not the effect of abolishing, in the case of towns to which it applied, their division into wards; the only change made was that, instead of there being a prescribed number of councillors for each ward, the number of councillors was fixed at six, and, instead of being elected by wards, they were all to be elected by a general vote. The language of sub-sec. 2 of the added section should be treated as an inaccurate expression of the idea that, on the conditions and in the event mentioned in it, the former mode of constituting the council and of election of councillors might be restored. Sub-section 2 of sec. 118 should be read, in order to give effect to the amendment, as empowering the council, where the election is to be by general vote, to provide by by-law that the nomination of councillors shall be held at the same time and place as that for mayor, and to make the same provision in the case of all towns of over 5,000, where the nomination of councillors must still be made for the several wards of the town. And sec. 119 should be read as providing that the meeting for the nomination of councillors in either case shall, unless the contrary is provided by by-law, be held at noon. Therefore, the council had power to pass the by-law under the authority of which the nomination for councillors was held at the same time and place as the nomination for mayor, and the appellants were properly nominated and duly elected.

Appeal allowed with costs here and below.

FEBRUARY 13TH, 1903.

C.A.

HOLDEN v. TOWNSHIP OF YARMOUTH.

*Railway—Negligence of Servants—Crossing—Non-repair of Road—Injury to Persons Crossing Track on Highway—Liability of Railway Company.*

Appeals by defendants the corporation of the township of Yarmouth and the Michigan Central Railway Company from the judgment of FALCONBRIDGE, C.J. (1 O. W. R. 557), in favour of plaintiffs as against both defendants for \$1,600 damages and costs. The plaintiffs were driving along the Talbot Road in the township of Yarmouth, and, when crossing the railway track, their horse was frightened by the moving of cars, and they were thrown out and injured.