

FALCONBRIDGE, C.J.

AUGUST 21ST, 1902.

TRIAL.

HOLDEN v. TOWNSHIP OF YARMOUTH.

Railway—Negligence of Servants—Crossing—Non-repair of Road—Municipal Corporation—Damages—Loss of Consortium.

Action tried at St. Thomas brought by the plaintiff for \$8,000 damages for injuries received by him and his wife, while driving across the Michigan Central Railway tracks on Talbot street, near St. Thomas. Plaintiff alleges that accident was caused by the non-repair of the township road and the negligence of the servants of the railway company.

W. R. Riddell, K. C., and C. F. Maxwell, St. Thomas, for plaintiffs.

J. M. Glenn, K.C., and W. L. Wickett, St. Thomas, for defendant Township.

D. W. Saunders and E. C. Cattanaach, for defendants the Michigan Central Railway Company.

Angus MacMurchy, for defendants the Canadian Pacific Railway Company.

FALCONBRIDGE, C.J., held that the plaintiff was entitled to damages. The accident was due to some sudden noise of the railway cars as the plaintiff crossed the tracks which startled the horse, and to the absence of a necessary railing at that point on the highway. *Toms v. Whitby*, 35 U. C. R. 195, *Sherwood v. Hamilton*, 37 U. C. R. 410, approved of in *Foley v. East Flamborough*, 26 A. R. 43, *Bell Telephone Co. v. Chatham*, 31 S. C. R. 61, referred to, Damages to male plaintiff \$50 for his own injury, \$350 for loss of consortium and service, to female plaintiff, \$1,200. Judgment accordingly with costs. Thirty days' stay.

Maxwell & Maxwell, St. Thomas, solicitors for plaintiff.

W. L. Wickett, St. Thomas, solicitor for defendant township.

Kingsmill, Hellmuth, Saunders, & Torrance, solicitors for Michigan Central R. W. Co.

MacMurchy, Denison, & Henderson, solicitors for Canadian Pacific R. W. Co.