

the township of York, near the city of Toronto, the plaintiffs alleging that the defendants were guilty of negligence.

The action was tried with a jury at Toronto.

H. J. Macdonald, for the plaintiffs.

E. F. B. Johnston, K.C., and W. B. Milliken, for the defendants.

LENNOX, J., said that the questions left to the jury were not objected to, and were answered in favour of the plaintiffs. The affirmative answer to the question, "Were the defendants guilty of negligence causing the injuries complained of?" prima facie excluded the contention of the defendants that the Corporation of the Township of York were, at the time of the accident, jointly, if not primarily, responsible for the injuries sustained. The township corporation, as well as the defendants, might have been liable; but the plaintiffs did not give the corporation the notice required by the Municipal Act; and the corporation were not sued.

The defendants contended that they and the township corporation were joint tort-feasors, and that the plaintiffs, having by laches released the one from liability, could not maintain an action against the other; for, amongst other reasons, the plaintiffs by their conduct prevented the defendants from raising any question of contribution. As to this the learned Judge said that at common law there was no right of contribution between joint tort-feasors; and the defendants had no statutory remedy over against the municipal corporation. Reference was made to *Am. & Eng. Encyc. of Law*, 2nd ed., vol. 24, pp. 306, 307, cited by counsel for the defendants; and it was pointed out that the plaintiffs had obtained no satisfaction, they had not been compensated, they had not executed a release, they had not dealt with either of the wrong-doers—there was at most a statutory bar of the right of action against one of them. The plaintiffs could not be said to be estopped.

Further, the learned Judge did not think that the defendants and the township corporation were joint tort-feasors: *Addison on Torts*, 6th ed., p. 94. The liability of the defendants was for misfeasance by original improper construction and misfeasance and nonfeasance by improperly repairing and neglecting to repair after notice; while the liability of the municipal corporation was for nonfeasance only.

Judgment for the plaintiff William King for \$300 and for the plaintiff Lucinda King for \$700, with costs.