

made up in the railway yard. The deceased improperly went between the cars while in motion for the purpose of uncoupling them. At the moment when he was between the cars they came in contact with cars already standing upon the track. As the result, he was crushed by logs projecting over the end of one of the cars and instantly killed.

The jury have found that although the logs were properly loaded in the first place, the railway was negligent in not discovering earlier that the logs were in a dangerous position. Upon these facts I think the plaintiff fails. The accident causing his death was the direct result of the plaintiff's misconduct in going between the cars while in motion.

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ONTARIO DRAINAGE COURT.

G. F. HENDERSON, K.C., REFEREE. SEPTEMBER 20TH, 1913.

CULLERTON v. TOWNSHIP OF LOGAN.

*Water and Watercourses — Drainage — Improper Construction of Drainage Works — Evidence — Continuing Damage—Effect of Statutory Limitation on—Non-Repair — Necessity of Notice to Municipality — Municipal Drainage Act, s. 80 (a)—Damages—Quantum of—Costs.*

HENDERSON, K.C., DRAINAGE REFEREE, *held*, that a municipality is not liable for damages caused by the non-repair of drainage works unless and until a notice specifying the non-repair is served upon it.

That an action can be brought upon a continuing damage, even though two years have elapsed from the inception thereof.

*Wigle v. Gosfield*, 7 O. L. R. 32, followed.

*Thackeray v. Raleigh*, 25 A. R. 226, distinguished.

Action for damages caused the plaintiff's lands by reason of the alleged improper construction of a drain by the defendants and their neglect to keep it in repair.

J. C. Makins, K.C., for the plaintiff.

F. H. Thompson, K.C., for defendant.

HENDERSON, K.C., REFEREE:—Prior to the passing of by-law 448 by the township of Logan, which was provisionally adopted on the 14th May, 1906, the waters from that portion of the drainage area in question in this action, lying to the northwest of the property of the plaintiff, were collected into a drain on what is known as Logan road, at a