

FALCONBRIDGE, C.J.K.B.

MARCH 16TH, 1915.

ROBINSON LITTLE & CO. v. TOWNSHIP OF DEREHAM.

*Highway—Nonrepair—Injury to Goods Carried in Waggon by Waggon Upsetting—Narrow Roadway—Want of Guard-rail—Negligence of Driver of Hired Waggon—Owners of Goods not Identified with Driver—Findings of Fact of Trial Judge—Damages.*

Action to recover damages for injury to goods of the plaintiffs by reason, as the plaintiffs alleged, of a road in the township of Dereham being neglected by the defendants, the township corporation, and defective and out of repair.

The action was tried without a jury at Woodstock and Toronto.

Sir George Gibbons, K.C., and G. S. Gibbons, for the plaintiffs.

G. H. Watson, K.C., and S. G. McKay, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B.:—The plaintiffs are wholesale dry goods merchants carrying on business at the city of London. On the 29th January, 1914 (a very dark night), a traveller of the plaintiffs, in the usual course of his business, was being driven with his cases of samples in a waggon known as a democrat (and described as a good, fairly heavy waggon), drawn by two horses, along a highway of the defendants, viz., the 10th concession line.

The conveyance in which the cases containing the samples were being carried was upset, and the samples were so damaged as to be rendered of no value. The plaintiffs contend that the highway had become defective owing to the neglect of the defendants. The defendants, besides denying this allegation, contend that, if damages were sustained as alleged, the same were caused through the neglect and fault of the plaintiffs, and not of the defendants.

I find that the road at the place of the accident was too narrow. It was not only too narrow, but it narrowed in at one place and widened out at another, which made it more dangerous than it otherwise would have been. Secondly, I find that it should have been protected by a guard-rail. The road was not in a state reasonably safe and fit for ordinary travel.