

fendants' track in their station-yard at Caledonia station. On the morning of the 17th May, 1911, he went with his team to begin the work, and while in the station-yard was thrown from his waggon and killed. The immediate cause of the jolt which threw him from the waggon was the sudden descent of one of the wheels into a rut in the roadway, which roadway, it is said by the plaintiff, was out of repair—such lack of repair being the negligence of which the plaintiff complains. The defendants deny that the roadway in question formed any part of the station-yard, and say that another and sufficient roadway along the other side of the track had been supplied and properly maintained, and was the only roadway which the deceased was entitled to use.

The roadway in question is upon the former site of a track which had for some reason been removed southerly a distance of about ten feet some two years before the accident—after which, as the undisputed evidence shews, teams began to be driven in and out over the ground formerly occupied by that track, a custom which continued without interruption by the defendants until the accident in question. There was some evidence that the condition of the road at the time of the accident had continued for some time prior thereto. The rut is described as two feet long and about eight inches deep.

The defendants called no witnesses. At the close of the plaintiff's case, a motion of nonsuit was made, upon the ground that no cause of action had been established, which was refused, and the case went to the jury, who, in answer to questions, found that the place on which the deceased was driving at the time of the accident was used by the public openly and constantly as a road for teams before the accident; that the defendants were guilty of negligence in allowing the rut or hole to remain as it existed at the time of the accident; that such negligence was the cause of the injury; that there was no contributory negligence; and they assessed the damages at the sum of \$5,000, for which sum the plaintiff has judgment.

The case could not, I think, have been withdrawn from the jury. The material issues were upon questions of fact; and the findings are, I think, warranted by the evidence. The Dominion Railway Act, by sec. 284, imposes a duty upon railway companies to furnish adequate and suitable accommodation for the carriage, unloading, and delivery of traffic. And, although the road upon the south side was the better road, there was nothing to indicate that the other road upon the north side was not