

The action was tried without a jury at Whitby.

R. T. Harding, for the plaintiffs.

J. H. Rodd, for the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, found in favour of the plaintiffs' contention as to all the allegations of defects in materials and in the mode of laying the pavement, and agreed with the plaintiffs' view of the interpretation of the contract.

He also found that the bad condition of the pavements was due to such defects and improper work, and not to the operation of the railway. It was to be noted also that the defendants contracted for and guaranteed and built the pavement when the railway was already *in situ* and in operation, and presumably with reference to the then present conditions. The defendants might have expected or hoped that a heavier rail would be laid subsequently, but had no contract or assurance that such would be done.

Both counsel stated in argument that the defendants had voluntarily expended some \$2,600 on repairs. The learned Chief Justice accepted that statement, although it did not quite agree with his notes, and gave the defendants credit for that sum.

Judgment for the plaintiffs for \$7,400—the balance due under the bond—with costs.

LENNOX, J.

AUGUST 23RD, 1918.

SISTERS OF ST. JOSEPH OF THE DIOCESE OF HAMILTON
v. WALSH.

Will—Construction—Bequest of Residue to Charitable Institution—Inaccurate but Sufficient Description—Residue Payable after Payment of other Legacies in Full—Absentee Legatees—Presumption of Death—Lapsed Legacies—Benefit of Residuary Legatee—Declaration—Distribution of Estate—Costs.

Action for construction of the will of Timothy Tracey, and for a declaration that the plaintiffs, as residuary legatees, were entitled to the sum of \$2,208.75 and interest.

The action was tried without a jury at Toronto.

M. G. Cameron, K.C., for the plaintiffs.

William Proudfoot, K.C., for the defendants.