

action to trial on the earliest day possible and giving the usual undertaking as to damages, the injunction will be continued until the trial. The costs of this motion will be in the cause unless the trial Judge should otherwise direct.

FALCONBRIDGE, C.J.

SEPTEMBER 4TH, 1906.

TRIAL.

CAMPBELL v. TOWNSHIPS OF BROOKE AND  
METCALFE.

*Highway — Non-repair — Injury to Person — Necessity for  
Guard-rail—Liability of Municipal Corporations—Dam-  
ages.*

Action for damages for personal injuries sustained by one of the plaintiffs, a married woman, by reason of the non-repair of a highway as alleged, and for expenses incurred by the other plaintiff, her husband, in consequence of the injuries.

G. C. Gibbons, K.C., and J. C. Elliott, Glencoe, for plaintiffs.

T. G. Meredith, K.C., R. V. LeSueur, Sarnia, and H. G. Pope, Strathroy, for defendants.

FALCONBRIDGE, C.J.:—I find the issues as to the condition of the road and the necessity for a guard-rail in favour of plaintiffs.

The principles are laid down in *Walton v. York*, 6 A. R. 181; *Foley v. East Flamborough*, 26 A. R. 51; *Plant v. Normanby*, 10 O. L. R. 16, 6 O. W. R. 31. The subject is discussed and the authorities are collected in Mr. Denton's valuable work on this branch of Municipal Negligence, p. 113 et seq.

And I find that the defects in the highway caused the accident. I prefer the evidence of plaintiffs and Myrtle Leach to that of Archibald Compbell, Christina Leach, and W. H. Leach. Campbell's partizanship was illustrated by his taking the trouble to play the part of eavesdropper at a conversation on the Saturday before the trial between plaintiffs' solicitor and another.