

C. J. Holman, K.C., for defendant Dawes.

F. J. Dunbar, for defendants the corporation of the township of West Zorra, supported the motion.

George Wilkie, for plaintiff, contra.

THE MASTER:—The statement of claim alleges that Dawes owns lands adjacent to the road in the township of West Zorra; that he “unlawfully and negligently built and maintained a barbed wire fence in front of said lands, and so near to the travelled portion of the said road allowance and highway as to render it dangerous to use the said travelled way as a highway.” It then alleges that Dawes built a portion of the fence “out into the road allowance so as to enclose a portion thereof within the said fence, and so as to leave the said fence dangerously near to the travelled portion of the said highway, and to leave the remaining portion of the highway so narrow as to be dangerous to travellers using the same.”

Paragraph 6, which follows, says: “The defendants the municipal corporation of the township of West Zorra negligently and unlawfully allowed and permitted the said fence to be so built and maintained as aforesaid, and the highway to remain in such dangerous condition.”

It then alleges that a valuable horse of the plaintiff was injured by the encroaching fence, and claims unstated damages.

For the motion *Baines v. Town of Woodstock*, 6 O. W. R. 601, 10 O. L. R. 694, was relied on. The exact words of the statement of claim in that case are not given in the report, and I do not now recall them. That case, however, was, as I understand, disapproved by Meredith, C.J., in *Campbell v. Cluff*, 8 O. W. R. 780. It can, therefore, no longer be considered as binding.

In these cases much depends upon the exact form of words used, and from what is stated about the pleading in the *Baines* case, there seems to have been a distinct allegation of negligence on the part of the corporation after knowledge of the wrongful act of the Patricks.

Here the pleader seems to have paid attention to that case and also to that of *Collins v. Toronto, Hamilton, and Buffalo R. W. Co.*, 10 O. W. R. 84, which was affirmed by the Divisional Court, *ib.* 263.