

FALCONBRIDGE, C.J.K.B.

FEBRUARY 5TH, 1913.

BARCLAY v. TOWNSHIP OF ANCASTER.

Highway—Nonrepair—Injury to Traveller—Negligence of Township Corporation—Want of Guard-rail at Dangerous Place—Cause of Injury—Contributory Negligence—Res Ipsa Loquitur—Damages.

Action by husband and wife against the Municipal Corporation of the Township of Ancaster for damages by reason of injuries sustained by the wife by being thrown out of a buggy while driving along the first concession line in the township of Ancaster, by reason, as the plaintiffs alleged, of the want of a guard-rail or other protection at a dangerous place.

The action was tried before FALCONBRIDGE, C.J.K.B., without a jury, at Hamilton.

G. Lynch-Staunton, K.C., for the plaintiffs.

J. L. Counsell, for the defendants.

FALCONBRIDGE, C.J.:—The question as to the necessity of guard-rails or barriers at dangerous places along township roads has been the subject of many decisions both in the United States and in Ontario. The leading authorities up to 1906 are collected by Judge Denton in his valuable book on Municipal Negligence, pp. 113 to 120. On p. 119, he gives a summary of the tests to be applied in cases of this character. I refer further to my brother Teetzel's careful judgment in *Kelly v. Township of Carriek* (1911), 2 O.W.N. 1429.

Every case of this kind must depend on its own particular circumstances. The defendants here urge that it is not reasonable to ask them to supply guard-rails here or at like places in the township. Officials of the municipality admit that it is a rich and well-settled township, as well able, perhaps, as any township in Ontario to take care of its highways.

The photographs filed as exhibits shew that a guard-rail had been erected on one side of the road a long time before this accident, and had been allowed to fall into decay.

I am of opinion, therefore, that the defendants are liable, unless there is any defence on the ground of contributory negligence—which, by the way, is not specifically pleaded. I do not think that the doctrine *res ipsa loquitur* is applicable. The accident was caused by the whippletree of the buggy parting