

MASTEN, J.

NOVEMBER 25TH, 1915.

*LINSTEAD v. TOWNSHIP OF WHITCHURCH.

Highway — Nonrepair of Bridge — Collapse under Weight of Traction-engine — Liability of Township Corporation — Municipal Act, 3 & 4 Geo. V. ch. 43, sec. 460(1) — Inspection — Absence of Notice or Knowledge of Nonrepair — Traction Engine Act, 2 Geo. V. ch. 53, sec. 5(4) — Failure to Comply with Requirements of — No Causal Connection between Failure and Accident — Fatal Accidents Act — Damages for Death of Son.

Action by Sarah Jane Linstead against the Corporation of the Township of Whitchurch to recover damages for an alleged breach of duty on the part of the defendants in failing to maintain in proper repair a bridge on the highway known as the Bogarton road, situate in that township; the plaintiff alleged that such want of repair resulted in the death of her son, Walter Linstead, and she sued as sole beneficiary, under the Fatal Accidents Act.

There were two main defences: (1) that the bridge, shortly before the accident, was regularly and thoroughly inspected on behalf of the defendants and reported sound, and that the defendants had no notice of any want of repair; (2) that the deceased, when he met his death, was crossing the bridge on a traction-engine, and, as he failed to lay down planks, he was illegally on the bridge and could not recover: Traction Engine Act, 2 Geo. V. ch. 53, sec. 5(O.)

The traction-engine belonged to one Pipher, who was operating it, with the assistance of the deceased, a volunteer, at the time of the accident, which occurred on the 1st August, 1913. When the tractor was crossing the bridge, the bridge collapsed, the tractor fell into the stream beneath, and Linstead was found dead, probably from being scalded by the escaping steam.

The action was tried without a jury at Toronto.

T. Herbert Lennox, K.C., for the plaintiff.

W. M. Douglas, K.C., and James McCullough, for the defendants.

MASTEN, J., reviewed the evidence in a considered opinion; he found that the damages to the plaintiff arose in consequence