

J. J. Ritchie, K.C., for plaintiff.

H. Mellish, K.C., for defendant.

MEAGHER, J.:—The plaintiff on the 2nd of February, 1910, was driving slowly up Quinpool road in his sleigh when one of the runners came in contact with the guard rail of the defendant's track at the corner of Quinpool road and Oxford street, with sufficient force to stop the sleigh, upset it and throw him violently upon the ground fracturing the upper bone of his right arm at the shoulder joint and otherwise bruising him on the arm and chest. He suffered very severely for a considerable time from the injury and even yet, at times, it causes him pain. He never will be able to raise his right arm above the level of the shoulder or extend it towards the left beyond the (front) centre of the left arm at its junction with the shoulder. His injuries however, while he will never have the same free use of his arm as before will not interfere with his professional work except in obstetrics. The horse was cut and the harness practically destroyed, but no claim was made or alleged for these.

The accident occurred about noon. He was taken to a house near by, and half a grain of morphia administered, and after a short rest he was taken home and medical aid summoned. The next morning he was taken to the hospital and the arm set. He was confined to bed for a fortnight, but remained in the hospital until the first of March. He was unable for fully eight weeks to do any work, and during the next five he only saw a few patients at his office, but finding it fatiguing he quit work and went away to recruit. His sufferings were very great during the greatest part of the thirteen weeks and were quite considerable during the balance of that time, and for some time after, and even yet he suffers some from it especially when he raises his arm above the shoulder level.

The income from his professional earnings averaged not less than six thousand dollars per annum.

At the place of the accident the track curves from a point north of the centre of Quinpool road into Oxford street. It is quite a long curve, and of such form that a driver desirous of striking it at right angles anywhere near the centre of the road would require to turn his horse nearly