

*et al. and the Corporation of the City of Ottawa*, 415.

2. *Lord Campbell's Act—Death of wife—Husband's right of action—Pecuniary damages—Collision at crossing—Proof of negligence.*—The plaintiff sued under Lord Campbell's Act, on behalf of himself and his children, for the death of his wife, occasioned by the defendants. The wife had some separate estate from which she derived an income, but the jury allowed no damages in respect thereof. It was not shewn that the wife afforded any pecuniary assistance either to the husband or her children. The jury found for the plaintiff and apportioned the damages amongst the plaintiff and some of his children.

*Held*, ARMOUR, J., dissenting, that the verdict was wrong; for the plaintiff was not entitled either for himself or the children to recover compensation for anything but pecuniary loss, or the loss of a reasonable probability of pecuniary benefit.

*Per* ARMOUR, J. The loss to be compensated is the loss of some benefit or advantage capable of being estimated in money, as distinguished from a *solatium* for wounded feelings and loss of companionship; and the loss to the husband of the wife's performance of her household duties, and to the children of a mother's education, are both losses which can be estimated by a jury.

*Per* ARMOUR, J., the jury were rightly directed, under the facts, that the defendants had laid down the track, on which the accident happened, in the city of Ottawa, without authority, it being a third track or switch for use in connection with their station, for purposes of shunting, &c., and if illegally laid down no acquiescence,

except by by-law, would make it rightful as against the father.

*Per* HAGARTY, C. J. Having been there for many years with the knowledge and acquiescence of the corporation, its existence could not alone make defendants liable, but it was properly left as a circumstance to be considered by the jury.

The train was backing at the time. *Per* ARMOUR, J. The jury were rightly directed that defendants were bound to sound the whistle or ring the bell, when the nearest part of the train was eighty rods from the crossing; and having regard to the fact that they had without authority increased the number of tracks there, it was also right to tell them that it was for them to say whether, considering the nature of the crossing, they should not have stationed a man there, or taken some other than the statutory precautions. *Lett, Administrator of Lett v. The St. Lawrence and Ottawa Railway Co. and Hinton v. St. Lawrence and Ottawa Railway Co.* 545.

3. *Fences—Gates—Non-repair—Accident.*—The defendants' line of railway ran through the plaintiff's farm, and the plaintiff's mare escaped from a field adjoining the railway through a gate opposite a farm-crossing which the defendants had erected, and which was out of repair, and was killed on the railway.

*Held*, that it was the duty of the defendants to keep the gates in repair, and that they were liable, whether they were bound to erect such farm-crossing or not. *Murphy v. The Grand Trunk Railway Co.* 619.

## REFORMATION.

*See* SALE OF LAND, 2.