

chinery was wearing out. About a year prior to plaintiff being injured, he informed Morrison, the then manager, that a new elevator was required because of the worn out condition of the machinery. Baker afterwards told Berry, who succeeded Morrison in the management, that because of the worn out condition of the pinion gear and driving gear connected with the elevator machinery, they should be renewed. The elevator was 21 years old, and the life of such an elevator is about 10 or 12 years. Baker said he considered the "chattering" caused the key to come out, and the key coming out caused the fall of the elevator.

The 6th question submitted to the jury was: "What, in your opinion, caused the falling of the key?" Answer: "Vibration and general dilapidation of the running gear."

On this answer I think plaintiff is entitled to recover at common law.

Judgment for plaintiff for \$3,150 and costs.

APRIL 17TH, 1903.

DIVISIONAL COURT.

SUMMERS v. COUNTY OF YORK.

Way—Non-repair—Injury to Person—Liability of County Corporation—Claim over against Railway Company—Proximate Cause of Injury—Moving Car—Agreement between Corporation and Company.

Appeal by defendants from judgment of County Court of York in favour of the Metropolitan Railway Company, third parties, upon an issue between defendants and third parties.

Plaintiff recovered judgment against defendants for \$160 for damages sustained by reason of his horses falling over an embankment upon a road of defendants, and the judgment was affirmed by a Divisional Court (1 O. W. R. 137).

The issue between defendants and third parties was afterwards tried in the County Court and decided in favour of the latter.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

C. C. Robinson, for appellants.

J. H. Moss, for third parties.

STREET, J.—The facts as found in the Court below are these. The plaintiff was driving along the road in question, and at a point where there is a steep embankment, eight feet high, his horses became restive by reason of the approach of an electric car of third parties, whose tracks are beside the travelled parts of the highway. Plaintiff got off his waggon and stood at his horses' heads and had them under