

Teetzel, J.]

CLEMENS v. TOWN OF BERLIN.

[Jan. 21.

Jury notice—Striking out—Steam roller on highway—Misfeasance by defendants—Non-repair—O.J.A. s. 104.

An action for damages caused by runaway horses which were frightened by a steam roller, left standing on highway, is an action based on an act of misfeasance by the defendants, and not of the non-repair of the highway, and the plaintiff is entitled to have it tried by a jury. Judgment of the Master in Chambers reversed.

DuVernet, for plaintiff. *C. A. Moss*, for defendants.

Boyd, C., Ferguson, J.]

[Jan. 25.

PALMER v. MICHIGAN CENTRAL R. R. CO.

Railway—Farm Crossing—Approaches—Repair.

Judgment of Street, J., reported 6 O.L.R. 90, affirmed.

The accident arose on the plaintiff's own property and from his own default in not remedying the defect in the approach, and in not giving notice to the company that any such defect existed.

Semble, a distinction exists between the approach to an over-head bridge on a public highway, and the approach on private lands to a farm crossing over the line of rail. While the presumption will be, in the case of the former, that the approach is part of the bridge to be kept in repair by the Railway Company, in the case of the latter, in the absence of original compensation as to the crossing, and of express agreement, while it is for the company to maintain the crossing over its limits, it is for the owner to maintain the approach within his limits.

Tremear, for plaintiffs. *Hellmuth K.C.*, for defendants.

North-West Territories.

SUPREME COURT.—NORTHERN ALBERTA.

Scott, J.]

KING v. LATIMER.

[Dec. 30, 1903.

Practice—Judgment by default—Debt—Interest—Setting aside—Rule 90.

In an action for \$108.07 for goods sold and delivered, the plaintiff claimed \$4.66 as interest, but did not shew upon what the claim for interest was founded.

Held, on an application to set aside a judgment, signed in default of appearance under Rule 90, that, in the absence of an allegation in the statement of claim of some contract, expressed or implied, to pay interest, it is an unliquidated demand, and cannot be included in such judgment.

Judgment set aside accordingly.

J. D. Hyndman, for plaintiff. *F. C. Jamieson*, for defendant.