always across the track except when removed for the purpose of allowing the cars to be moved; they also knew that this gang-plank was in almost constant use, so that it would be almost certain to cause danger, if not actual injury, if due care was not taken.

The engine approached these cars with some speed and violence, intending to free them from ice yet remaining and to make a coupling. This was not in itself negligent or improper.

I have come to the conclusion that the employees of the railway in charge of the engine were negligent in not themselves seeing that there were no men in a position of danger before actually moving the cars. In my view they were not justified in relying upon the statement of the foreman, but should have seen that all was right before undertaking to move the cars, particularly when they knew that men might be working around them, or around the gang-plank, who could not be seen from the engine.

I find it difficult to assess the damages upon any satisfactory principle. Viewing all the contingencies as best I can, I fix the damages at $2,500, which I apportion equally between the widow and the infant child, and I would allow maintenance to be paid to the mother out of the infant's share at the rate of $125 per annum, for the next 5 years, payable half-yearly.

On no theory of the case does it appear to me that there is any liability on the part of the steel company.

I may add that I prefer the evidence of the steel company's foreman to that of the train crew, if this is found to be of importance.

HON. MR. JUSTICE MIDDLETON. NOVEMBER 17TH, 1913.

GUEST v. CITY OF HAMILTON.

5 O. W. N. 310.

Municipal Corporations — By-law Expropriating Lands — Power of Corporation to Repeal—No Entry Authorised—Trifling Entry in Fact Made — Lesser Quantity of Land Taken — Consolidated Municipal Act 1903, s. 463.

MIDDLETON, J., *held*, that where an expropriatory by-law of a municipality did not authorize or profess to authorize an entry to be made upon the lands expropriated that a trifling entry upon one corner of the said lands for the purpose of constructing a drain did not preclude the municipality from repealing the by-law.

Grimshaw v. *Toronto*, 28 O. L. R. 512, discussed.