
REPORTS AND NOTES OF CASES.

Province of Ontario.

HIGH COURT OF JUSTICE.

Falconbridge, C.J.K.B., Britton and Riddell, JJ.] [July 19.

BONDY v. SANDWICH, WINDSOR AND AMHERSTBURG RY. CO.

Negligence—Duty towards trespasser—Ontario electric railway.

Appeal by the defendant from the judgment of the County Court of the county of Essex, awarding the plaintiff \$200 for the loss of his horse, killed by the defendant's car. The defendant is an electric railway incorporated by the Ontario Legislature, and running between Windsor and Amherstburg along the highway and on an additional strip of land purchased from adjoining landowners. The track is partly on the highway and partly on the purchased strip. The horse in question had escaped from its pasture, and was standing upon the railway track, when the defendant's car, coming round a bend, struck the horse and caused its death.

The evidence shewed that as soon as the motorman saw the horse he did everything in his power to stop the car, but the jury found that he could have seen the horse in time to have stopped the car from striking it. There was a bend in the road which, together with the presence of trees on the adjoining land, to some extent obscured the vision.

Held, reversing the County Court, that the horse was a trespasser, and that under the circumstances the motorman was under no obligation to keep a look-out, he having done all in his power to avert the collision after seeing the horse, and the appeal was therefore allowed and the action dismissed with costs.

C. A. Moss, for appellant. J. H. Rodd, Windsor, for respondent.