

HON. MR. JUSTICE SUTHERLAND:—The defendant Crothers owns property situate on the south-east corner of Clergy and Earl streets in the City of Kingston. His house stands back from the street line, and the land is not fenced along the street limits.

From the north-west corner of the house he had built a barbed wire fence to the north-west angle of his lot and beyond on the boulevard of the street almost to the point where the concrete walks on said streets intersect.

On the night of February 1st, 1913, at about 10 o'clock, the plaintiff, accompanied by her daughter, was walking in a westerly direction along the sidewalk on the southerly side of Clergy street and opposite the defendant Crothers' property, when she suddenly noticed a runaway team coming easterly along Clergy street beyond Earl street, at, as she says, "a terrific rate" and heading directly towards her. In her fright she ran southerly from the walk, across the boulevard ten feet wide, and upon the defendant Crothers' lawn.

While there were electric lights in the vicinity she says she did not see the fence and ran into it at a point ten feet from the southerly limit of the boulevard or street line, and about midway between the corner of the house and the corner of the defendant Crothers' lot. She got entangled in the wire, fell down heavily and dislocated her shoulder and cut her face. As a result she was confined to bed for about a week and under the doctor's care for two weeks.

The result of the injury was to leave the arm somewhat stiff and difficult to raise above the shoulder.

After some weeks the physician in charge seemed to think, and the plaintiff herself, that she was making satisfactory progress to recovery. She is a milliner and testified that before the accident she was making \$10 per week.

The writ herein was issued on the 18th April, 1913. On the evening of May 1st, following, the plaintiff received a call from the Rev. Mr. Neal, who told her he came on behalf of the defendant Crothers "to see about making a settlement for the injuries." After some conversation he offered \$100 in settlement, which she refused. He left and soon returned with the defendant Crothers when there was a further discussion as to settlement, those present being the plaintiff and her daughter, Mr. Neal and the defendant, Crothers. The latter increased the offer to \$120, or \$125,