

RIDDELL, J.:—The plaintiff is a medical man residing and practising his profession in Strathroy. The County of Middlesex had occasion to repair one of its highways, and placed a quantity of macadam along the road at the middle, leaving on each side sufficient space for a roadway or *via tuta*. The man in charge of the work wholly appreciated the fact that this road was much travelled, and as a culvert was under repair on the road, he barricaded it at each concession on either side of that part of it in which the culvert was. He should, of course, have placed a light upon or near the barricades at night; but he contented himself with asking the wife of a neighbouring farmer to ask her husband to put a light there. No light was in fact placed—the farmer and his man gave evidence that they did place a light as requested; but this I do not accept. In any case, even if the light was placed as they say, it was a wholly insufficient and inefficient warning. The plaintiff was driving early in the morning along the road, when his buggy came in contact with the barricade—a telegraph pole laid from the west side of the road upon the gravel, and about a foot or fourteen inches high. The plaintiff was thrown up and came down with his back on the edge of the seat—he was able to proceed and attend, in a manner, to his patient, but no long time after untoward symptoms made their appearance.

I find, as a fact, that before the accident he was a strong, athletic, well-preserved man of about 55 years of age and that as a result he has been somewhat seriously weakened. Since the accident he has not been able to do much—the accident caused a falling of the right kidney, an injury to the right pleura (not now of much moment), an infected gall bladder (colocystitis), and a milder form of neurasthenia.

The medical evidence was not more varied than was to be expected from perfectly honest and competent physicians upon a matter of opinion—perhaps the difference of temperament in those called, whether optimist or pessimist, would account for the difference in opinion as to the prognosis; and it may have been but a coincidence that the optimists were found on one side and the pessimists on the other.

The difficulty at the liver may, probably, be overcome by a surgical operation of a comparatively simple character; the neurasthenia may be expected to be fairly well overcome in about a year longer—but the prolapsed kidney is another story.

There is respectable authority for the proposition that an operation for such a trouble should not be attempted on a man over 50 years of age, although able and experienced surgeons