

The Ontario Weekly Notes

Vol. IV. TORONTO, FEBRUARY 14, 1913. No. 22

APPELLATE DIVISION.

FEBRUARY 3RD, 1913.

*COLQUHOUN v. TOWNSHIP OF FULLERTON.

Highway—Nonrepair—Injury to Traveller—Obstruction at Side of Road—Absence of Actual Contact—Want of Notice to Municipality—Liability.

Appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Perth dismissing the action, with costs to the defendants, and without costs to the third party, Clark.

The action was for damages for the loss of a horse by reason of an obstruction in a highway.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and LEITCH, JJ.

R. S. Robertson, for the plaintiff.

Glyn Osler, for the defendants and the third party.

MULOCK, C.J.:—At about 9.30 p.m. of the 11th October, the plaintiff was driving southerly on the Mitchell road, in an open buggy; and, on reaching the concession road, turned westerly. At the north-west corner formed by the intersection of the two roads, was a pool of water about six inches deep; and, in order to avoid it, the plaintiff drove along the southerly side of the travelled road, and close to a milk-stand standing on the road allowance, but a foot or two south of the travelled portion. The night was dark, and the plaintiff was unable to see the milk-stand. The horse, however, saw it, was frightened by it, and

*To be reported in the Ontario Law Reports.