

October 17th, 1897. The accident to plaintiff occurred thirty-eight days later, and arose from plaintiff's horse becoming unmanageable, consequence of taking fright at a passing train, and jumping into the cellar, taking plaintiff, who had been standing on the sidewalk holding it, with it.

*Held*—1. The question of negligence was for the jury, and that their finding should not be set aside, even although the court disapproved of it as being extreme under the circumstances.

2. The obligation of the owner of property adjoining a highway, upon which there is a dangerous excavation, to fence it for the protection of foot passengers, applies equally to all persons lawfully using the highway.

3. The point that the proximate cause of the accident was the noise of the locomotive frightening plaintiff's horse was not open to defendants, that point having been abandoned at the trial, and the defence rested wholly upon the ground that defendants were not bound to fence, except for the protection of foot passengers. GRAHAM, E. J., dissenting.

4. The damages allowed by the jury were not excessive under the circumstances.

Per GRAHAM, E. J.—The excavation being an illegal obstruction to persons using the highway, defendants were bound to anticipate the possibility of horses being frightened at the ordinary passing of locomotives at that point.

C. S. Harrington, Q.C., and F. T. Congdon, for appellant. A. Drysdale, Q.C., and J. A. Chisholm, for respondents.

Full Court.]

MEISNER v. MEISNER.

[May 15.]

*Public Instruction Act of 1895, c. 1—Powers of school trustees—Annual meeting—Notice of holding—Presumption as to posting of—Valuation of property for assessment purposes—Clause of act as to procuring from Municipal Clerk held directory only.*

In an action for damages for trespass for taking plaintiff's horse, defendants justified as trustees of School Section No. 40, in the County of Lunenburg, the horse having been taken under a distress warrant issued to recover the amount due by plaintiff for an assessment for school purposes.

At the annual meeting held in September, 1892, a resolution was passed voting the sum of \$200 "towards the building of a schoolhouse;" and at the annual meeting held in June, 1896, a resolution was passed that \$100 be added to the \$200 previously voted. These sums became a charge upon the real and personal property of the school section, and the warrant issued was for the recovery of the proportion due by plaintiff and others. The trustees selected a site for the proposed building, but plaintiff relied in part upon a resolution of ratepayers passed at a meeting called for that purpose, by which it was resolved that the new school-house should be erected on the site of the former building.