

by the defendant Royce. All costs will be on the High Court scale, and no set-off of costs unless such, if any, as has been ordered.

DIVISIONAL COURT.

JULY 19TH, 1911.

*BONDY v. SANDWICH WINDSOR AND AMHERSTBURG
R.W. CO.

Street Railway—Operation upon Township Highway—Animal Killed by Car—Township By-law Forbidding Running at Large—Negligence—Duty of Railway Company—Findings of Jury.

Appeal by the defendants from the judgment of the Judge of the County Court of the County of Essex, upon the findings of a jury, in favour of the plaintiff, for the recovery of \$200 damages.

The plaintiff alleged that his horse was lawfully upon a certain highway, and that the defendants' servants so negligently operated one of their electric cars that it ran into and killed the horse.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

C. A. Moss, for the defendants.

J. H. Rodd, for the plaintiff.

RIDDELL, J.:—The jury found, in answer to questions, as follows:—

1. Was the plaintiff's horse, at the time of the accident, wrongfully upon the defendants' right of way? A. It was.

2. Even if the plaintiff's horse was wrongfully upon the defendants' right of way, could the defendants, by the exercise of reasonable care, have avoided the accident? A. They could by exercising proper precaution.

This answer was explained by the jury as follows (in answer to the learned Judge): "The jury considered that the motorman should have seen the horse on the track in time to enable him to stop the car." The plaintiff had asserted at the trial and urged on the jury that the "car was running at an excessive rate of speed and that the defendants' servants, had they exercised rea-

*To be reported in the Ontario Law Reports.