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No. 13

HIGH COURT DIVISION.

LENNOX, J., IN CHAMBERS.

DECEMBER 6TH, 1913.

HARKER v. TOWN OF OAKVILLE.

Parties—Third Parties—Motion to Set aside Third Party Notice—Death by Electric Shock—Action for Damages against Municipal Corporation Supplying Electric Light—Claim for Relief over against Telephone Company—Crossing of Wires—Measure of Damages—Rule 165.

Appeal by the Bell Telephone Company of Canada, third parties, from an order of the 21st October, 1913, made by the Master in Ordinary, sitting for the Master in Chambers, dismissing the appellants' motion to set aside the third party notice served upon the appellants, in an action for damages for the death of a person killed by an electric shock in a house in Oakville, to which electric light was supplied by the town corporation, the defendants.

H. A. Burbidge, for the appellants.

D. Inglis Grant, for the defendants.

LENNOX, J.:—I think the judgment of the learned Master in Ordinary is right.

I cannot see that the very strenuous argument of counsel for the appellants that they cannot be brought in, because there is no right of contribution between joint tort-feasors, has any application. The defendants and the appellants did not act in concert; there was no intentional wrongdoing by anybody; and the act complained of at worst resulted from involuntary negligence.

The defendants in effect say to the appellants: "If we are liable, it is because you, by crossing your wires with ours, forced us to become your agents in carrying the high voltage current