Township of Yarmouth, 5 O. L. R. 579, does not apply, for here there is no statutory obligation on the part of the railway company either to fence or rail off or to place fence or railing on the upper level of the part of Hunter street where the accident happened.

Then sec. 611 of the Municipal Act does not relieve the city corporation, as the work was done under agreement with the city, and was practically authorised by by-law.

The action against the railway company will be dismissed, but, in view of the user of the street . . . by the company and of the somewhat complicated agreement between the defendants, it should be without costs.

As to damages, it is, of course, only the pecuniary interest of the plaintiff and his wife . . . that can be looked at. Upon the evidence they are entitled to recover something.

The boy was in his eighth year, a bright boy, healthy, large for his age, generous, used to go upon messages for his parents. The plaintiff expected to have the boy educated for the medical profession. . . .

There was, in my opinion, a reasonable expectation on the part of the father and mother that they would live, and that the son Arthur, had he not met with this accident, would have lived to such an age as to be able to pay to them in money or money equivalent more than the cost of his maintenance and education. . . .

[Reference to McKeown v. Toronto R. W. Co., 19 O. L. R. 361; Houghkirk v. Delaware and Hudson Canal Co., 92 N. Y. 219; Rombough v. Balch, 27 A. R. 32; Blackley v. Toronto R. W. Co., 27 A. R. 44n.; Mason v. Bertram, 18 O. R. 1.]

I estimate the damages to the plaintiffs at $400, and direct judgment for that amount against the defendants the Corporation of the City of Hamilton, with costs; the money to be appropriated $200 to the plaintiff and $200 to his wife. There should be no set-off of costs.