

the trial Judge erred in his finding as to the cause of death; though bound to say that there is no great margin of foundation for the support of that finding in the evidence upon which it is based.

I would dismiss the appeal.

GARROW, J.A., concurred.

HODGINS, J.A., gave reasons in writing for agreeing with the conclusions of MIDDLETON, J.

MACLAREN and MAGEE, JJ.A., agreed with HODGINS, J.A.

*Appeal dismissed with costs.*

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FEBRUARY 13TH, 1913.

\*RE CITY OF TORONTO AND TORONTO AND YORK  
RADIAL R.W. CO.

*Ontario Railway and Municipal Board—Jurisdiction—Right of Appeal—Ruling on Preliminary Question not Appealed against—Leave to Appeal—Work Done in Pursuance of Previous Ruling—Street Railway—Power to Remove Line from one Street to another—Power of Expropriation—Construction of Statutes—Deviation—Costs.*

An appeal by the Corporation of the City of Toronto from an order of the Ontario Railway and Municipal Board of the 17th June, 1912, whereby the Board approved the plan, profile, and book of reference filed by the Toronto and York Radial Railway Company on the 30th May, 1912, shewing a certain proposed deviation of the line of railway of the company, from Yonge street, on the southerly end of the Metropolitan division of the railway.

The appeal was heard by GARROW, MACLAREN, MEREDITH, MAGEE, and HODGINS, JJ.A.

Irving S. Fairty, for the appellants.

C. A. Moss, for the respondents.

\*To be reported in the Ontario Law Reports.