

a train coming from one direction. On approaching the track he looked both ways, but did not look again just before crossing when he could have seen an engine approaching from behind which struck his team and he was killed. In an action by his widow and children the jury found that the statutory warnings had not been given, and a verdict was given for the plaintiffs and affirmed by the Court of Appeal.

*Held*, affirming the judgment of the Court of Appeal, (12 O.L.R. 71), Fitzpatrick, C.J., hesitante, that the findings of the jury were not such as could not have been reached by reasonable men and the verdict was justified. Appeal dismissed with costs.

*Rose*, for appellants. *German*, K.C., for respondents.

Ont.]

[Dec. 11, 1906.

HAMILTON STREET RAILWAY CO. v. CITY OF HAMILTON.

*Municipal corporation—Use of streets by electric railway—Payment for—Percentage of receipts—Traffic beyond city.*

By agreement between the City of Hamilton and the Hamilton Street Railway Co. the latter was authorized to construct its railway on certain named streets and agreed to pay to the city, *incur alia*, certain percentages on their gross receipts.

*Held*, following *Montreal Street Ry. Co. v. City of Montreal*, (1906) App. Cas. 100, that such payment applied in respect to all traffic in the city, including that originating or terminating in the adjoining Township of Barton.

2. As when the railway was extended into Barton the company agreed with that township to carry passengers from there into the city at city rates, the percentage was payable on the whole of such traffic and not in the portion within the city only.

3. The power of the company to construct its railway was not derived wholly from its charter but was subject to the permission of the city corporation, the city had therefore a right to stipulate for payment of such percentages and the agreement therefor was *intra vires*. Appeal dismissed with costs.

*Nesbitt*, K.C., and *Armour*, K.C., for appellants. *Blackstock*, K.C., and *Ross*, for respondents.