public on foot and in carriage continued for 18 months, and this enjoyment (coupled with the declaration of intention) raises the presumption of a dedication to the public, which is not rebutted by anything in the case."

In the present case there is what I think is the clearest evidence of an intention to dedicate, followed from the year 1850 to the present time by enjoyment by the public, without a single circumstance in all that time tending to rebut the presumption, and I think the street became a highway before the year 1856, when the railway company laid down their track across it.

I think the appeal should be allowed and that the judgment should be for the plaintiffs.

DECEMBER 16TH, 1904.

C.A.

KIRK v. CITY OF TORONTO.

Municipal Corporations — Dangerous Machine at Work in Street—Liability for Injuries to Passers-by—Use by Independent Contractors—Neglect to Use Proper Precautions.

Appeals by each of the defendants from judgment of MEREDITH, C.J., after trial without a jury, awarding plaintiff $1,200 damages. The chief question was whether defendants the corporation of the city should have been held liable to plaintiff for the accident which caused the injuries of which he complained.

The accident arose from a horse, which was being driven by one McBride along Yonge street near the intersection of St. Alban's street, becoming frightened by a steam roller engaged in the work of repairing St. Alban's street, and swerving suddenly upon plaintiff, who was passing on a bicycle.

The work of repair was being done by defendants the Dominion Paving and Construction Company, under a contract with defendants the city corporation. The roller was the property of the city, and was being used by the paving company under a provision in the contract whereby they were to be allowed the use of the roller upon requisition to the city engineer.