

his lands. It was sufficient to say that the evidence now before the Court did not establish interference or damage or any reasonable apprehension of either.

It was contended for the plaintiff that proof that the grate or bars at the entrance to the defendant's tunnel, and the roof of the tunnel, were erected and maintained in and over the bed of the creek, was sufficient evidence to make out a prima facie case of interference with the plaintiff's right to the natural flow of the waters, and that the onus of shewing that these erections did not constitute injurious obstructions was on the defendant, and *Bickett v. Morris* (1866), L. R. 1 Sc. App. 47, and *Menzies v. Lord Breadalbane* (1828); 3 *Wilson & Shaw* (Sc. App.) 235, were cited; but the case at bar was distinguished from these cases in that the lands of the plaintiff and defendant were shewn to be separated by Market street, and that it does not follow that the erections complained of must necessarily change the flow of the waters on the plaintiff's land, as was the fact in both of the cases cited, the parties to which were owners on opposite sides of a river. See the judgment of Lord Blackburn in *Orr Ewing v. Colquhoun*, 2 App. Cas. at pp. 853, 856, 857.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT:

APRIL 26TH, 1920.

MARKS v. TORONTO R.W. CO.

*Negligence—Street Railway—Injury to Child Attempting to Cross Track by Street-car Striking him—Negligence—Failure to Give Warning—Contributory Negligence—Question for Jury—Non-suit Set aside and New Trial Directed.*

An appeal by the plaintiffs from the judgment of FALCONBRIDGE C.J.K.B., at the trial with a jury, dismissing the action, which was brought to recover damages for injuries sustained by the infant plaintiff, a boy between 7 and 8 years old, owing to his having been struck by a moving car on the defendants' railway, and for the loss sustained by the other plaintiff, the boy's father, in consequence of the injury to the boy.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

J. M. Ferguson, for the appellants.

Peter White, K.C., for the defendants, respondents.