Reference to Miller v. Tipling (1918), 43 O.L.R. 88, 97, 98.

Although the conveyance to Wice was not executed by him, and therefore there could be, at law, no new grant of the easement, yet in equity the grantee would not be permitted to prevent the easement from being enjoyed by his grantor or those claiming under him: see May v. Belleville, [1905] 2 Ch. 605; Canada Cement Co. v. Fitzgerald (1916,) 53 Can. S.C.R. 263.

Ackroyd v. Smith (1850), 10 C.B. 164, had no application: see Thorpe v. Brumfitt (1873), L.R. 8 Ch. 650.

Appeals dismissed with costs.

FIRST DIVISIONAL COURT. JUNE 25TH, 1920

DONOVAN v. CANADIAN PACIFIC R.W.CO.

New Trial—Jury—Unsatisfactory Findings—Excessive Damages—Costs.

Appeal by the defendants from the judgment of CLUTE, J., upon the findings of a jury, in favour of the plaintiffs, in an action by the administrators of the estates of Susie Donovan and Sarah Donovan, deceased, under the Fatal Accidents Act, to recover damages for their deaths. They were burned to death in a car of the defendants, near Bonheur, while on their way from Regina to Belleville. The jury assessed the damages at $2,000 for the death of Susie and $3,000 for the death of Sarah, and the trial Judge gave judgment for those amounts, with costs.

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

W. N. Tilley, K.C., and Angus MacMurchy, K.C., for the appellants.

T. H. Lennox, K.C., and J. E. Madden, for the plaintiffs, respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that the Court had come to the conclusion that the ends of justice would be best served by directing a new trial. The findings of the jury were not satisfactory, and the damages were excessive. The costs of the last trial and of the appeal should be costs in the cause unless the Judge before whom the new trial takes place otherwise directs.

New trial ordered.