

The plaintiffs have not moved for judgment against Dickson, nor could they hope to succeed if they did so, after the decision of Mr. Justice Street in *Imperial Bank v. Tuckett*, 6 O. W. R. 121. It may not be without interest to record the fact that when that case came on for trial the defendant never even put in an appearance, and judgment went as of course. Nevertheless I am still bound by that decision.

If Ferguson had not unfortunately allowed the time to go by, he could not have been prevented from having his defence tried out. As it is, the question is as to the terms on which this is to be allowed.

With the continuous non-jury sittings at Toronto, no great harm can be done to plaintiffs by allowing the matter to proceed in the usual way, provided that defendant facilitates the speedy trial of the action. He is not in any stronger position than was the defendant in *Merchants Bank v. Scott*, 16 P. R. 90, and I think that the judgment should stand until the determination of the action, and that the same order should be made as to costs.

If the defendant prefers to have the judgment set aside, he can do so on giving security to the amount of \$3,000.

CLUTE, J.

DECEMBER 24TH, 1906.

WEEKLY COURT.

RE TOWNSHIP OF NORMANBY AND TOWNSHIP
OF CARRICK.

Highway—County Boundary Line Road—Deviation—Adoption of Road already Constructed—Municipal Act, sec. 654—Construction—Award—Jurisdiction of Arbitrators—Absence of Necessary Preliminaries—Counsel Attending before Arbitrators under Protest.

Appeal by corporation of township of Carrick from the award dated 8th November, 1906, of William John Hatton, Judge of the County Court of Grey, and James Millroy Thompson, Warden of the county of Grey, made under the provisions of secs. 654 and 656 of the Municipal Act, 1903,