

tions, it is not surprising, have not found the assent of a single judge out of the eight who had to pass on the case in the courts below, and it is not complimentary to this court, that the appellants must be assumed to have believed that we might here countenance their contentions. They were wrong, however, and they will have to abandon such unreasonable claims, and act accordingly in the future."

And finally the doctrine has been restated in the very latest case in the Ontario courts,<sup>11</sup> the Second Appellate Division declaring that "the street car has no right paramount to the ordinary vehicle. Both must travel on the street and each must exercise its right to the use of the street with due regard to the rights of others."

3. The *United States Cases* are to the like effect.

Though as has been already intimated the theory of the paramount right of the street car over ordinary vehicles has never received any countenance in English courts, it did for a while get some recognition in the courts of the United States. But in the country of its origin it has been long since discredited. The Appellate Court of Maryland deals with it in a judgment where the law is stated in clear terms<sup>12</sup> :—

"The court below was asked to say that a street car has a right of way on that portion of the street upon which alone it can travel paramount to that of ordinary vehicles. The doctrine had at one time found expression in some of the courts of this country, but a just sense of criticism has caused it to be abandoned. It would be both unjust and unwise to permit such a doctrine to prevail in our courts. It makes no difference how street cars are propelled, whether by animal power, electricity or otherwise. The vice of the doctrine contended for does not involve the subject of motor power. It is solely a question of the mutual rights of street car companies and of individual citizens to use the streets of the city. Neither has a superior right to the other. The right of each must be exercised with due

11. *Durie v. Toronto Railway Co.* (1914), 5 O.W.N. 829.

12. *Lake Rowland & Elevated Co. v. McKewen* (1895), 80 Maryland Reports, p. 593.