

cluding the benefit of each owner generally—only; and, although it must be treated as remedial in regard to all that comes within its grasp, it ought to be applied only to cases which plainly are there.

But all these considerations seem to me to be but wasted energy, as far as this case is concerned; because, as I understand it, other legislation and another by-law prevent the erection, at the place in question, of such a building as that in question; and, as the case is one to compel the granting of permission to erect such a building at that place only, no order, such as is sought, should go, if there be the right to refuse the permission by reason of the other, and subsequent I understand, legislation and by-law.

I would, therefore, allow the appeal, but give the plaintiff no other relief than such as the opinions expressed may be; with his costs throughout.

JANUARY 27TH, 1913.

\*HERRON v. TORONTO R.W. CO.

*Street Railways—Injury to Person Crossing Track—Collision between Street Car and Carriage—Negligence—Causal Negligence—Ultimate Negligence—Findings of Jury—Uncertainty—New Trial Directed by Divisional Court—Appeal to Court of Appeal—Restoration of Judgment of Trial Judge Dismissing Action.*

Appeal by the defendants from the order of a Divisional Court, ante 12, directing a new trial.

The appeal was heard by GARROW, MACLAREN, MEREDITH, MAGEE, and HODGINS, JJ.A.

H. H. Dewart, K.C., for the defendants.

Alexander MacGregor, for the plaintiff.

HODGINS, J.A.:—I am unable to see that there is any real difficulty arising out of the answers of the jury. I agree with Riddell, J., that it is not the tentative but the final answers of the jury that are to be considered; and, consequently, that we must, in this case, look to the answers given after the jury returned the second time. But I would add this, that those final

\*To be reported in the Ontario Law Reports.