

purpose of such railway—rapid transportation—unattainable, and would be opposed to the natural law of self-preservation; if one on foot, or in a vehicle, or otherwise, making lawful use of the highway, could saunter at will across the tracks, obliging the drivers of the company's cars to be constantly stopping or slowing down to avoid any infringement of such rights, rapid transit would be impossible, the purposes of the railway would be practically destroyed. The very necessity of the thing requires that the company's cars should have the right of way, and that those driving, or walking, along the tracks, or even crossing them only, should take reasonable care to clear the way for the passage of the cars. One on foot can stop, or turn in any direction, almost instantaneously; and any one driving can do so speedily; but not so with the cars, they cannot move except upon the rails, they can but go ahead or back up on them; and it takes some time to stop them, and a longer time to reverse their movement. It would reduce to a farce the railway service, for the benefit of the public, if the right of way were not accorded to the cars; which, as I have before mentioned, the law of self-preservation makes necessary. Such a right of way is in fact provided for in the provincial enactment respecting electrical railways. See R.S.O. 1897, c. 209, s. 40."

It is to be noted that the reasons of Mr. Justice Meredith are apparently merely the expression of his individual views. Mr. Justice Garrow remarking in his reasons that the case turned not upon the law but on the facts. As the expression of his own views the argument of Mr. Justice Meredith is, however, of importance, not only because of that learned judge's reputation for clear thinking, but because I have not found in any other reported judicial opinion so explicit a statement of the theory of the paramount right of the street car.

It is in that view that it becomes important to examine the two opposing views of the law, namely, that of equality of rights as stated by the Chancellor and Mr. Justice Middleton on the one hand, and that of paramount right of the street car as stated by Mr. Justice Meredith, on the other.