

held by an express trust under the terms of the will the rights of the other devisees could not be barred by the Statute.

Appeal allowed with costs and cross
appeal dismissed with costs.

S. H. Blake, Q.C., for the appellants.

McCarthy, Q.C., and *S. H. Osler*, for the respondents.

Ontario.]

April 4, 1892.

G. T. RY. v. SIBBALD.

G. T. RY. v. TREMAYNE.

*Railway Co—Negligence—Construction of road—Interference with
highway—Neglect to ring bell.*

The Midland Railway Co. in building a portion of its road left at a crossing the road bed some feet below the level of the highway and operated it without erecting a fence or otherwise guarding against accident at such crossing. The road was afterwards operated by the G. T. Ry. Co., and S. was driving along the road one day and as he approached the crossing an engine and tender came towards him on the track; the horses became frightened and broke away from the coachman who had jumped out to hold them, wheeled round and the waggon rolled over the edge of the highway on to the track in front of the train. S. lost his arm, and a lady who had been in the carriage with him was killed. In actions by S. and the administrators of the deceased lady, the jury found that the bell had not been rung as required by the statute, and that the defendant company was guilty of negligence thereby, and also in not fencing, or otherwise protecting, the dangerous part of the highway.

Held, affirming the decision of the Court of Appeals (18 Ont. App. R. 184) and of the Divisional Court (19 O.R. 164) that the Midland Ry. Co. had no authority to construct the road as they did unless upon the express condition that the highway should be restored so as not to impair its usefulness, and it or any other company operating the road was liable for injury resulting from the dangerous condition of the highway to persons lawfully using it.

Held further, that the bell not having been rung as the statute required, the company was liable for injuries caused by the horse taking fright and overturning the waggon so that the occupants were thrown on to the track though the engine and the waggon did not come in contact. *G. R. Ry. Co. v. Rosenberger* (9 Can. S. C. R. 311) followed.

Appeals dismissed with costs.

McCarthy, Q.C., for the appellants.

Burns, for the respondents.