to put in the box the witnesses who could have explained what took place when Malloy is said to have put his mark to the deed.

The transaction cannot stand. The plaintiffs are entitled to have the conveyance set aside and the registration thereof cancelled.

Having regard to all the circumstances of the case, and that I find no actual fraud or active undue influence on the part of the defendant, and that the evidence shews that he treated Malloy kindly and cared for him during his lifetime, I do not think there should be costs.

DIVISIONAL COURT. DECEMBER 11TH, 1909.

JONES v. TORONTO AND YORK RADIAL R. W. CO.

Street Railways—Injury to Person Crossing Track—Negligence—Failure to Give Warning—Contributory Negligence—Failure to Look for Approaching Car—Evidence—Question for Jury—New Trial.

Appeal by the plaintiff from the judgment of MACMAHON, J., at the trial, withdrawing the case from the jury at the close of the plaintiff's evidence, and dismissing the action, which was brought to recover damages for injuries sustained by the plaintiff, owing, as he alleged, to the negligence of the defendants, whereby he was run over by a car as he was crossing Yonge street, south of Eglinton avenue, and seriously injured. The railway track was on the west side of the road. The plaintiff was going north, and, desiring to see a person upon the west side of the road, he stopped his horse and waggon upon the east side. When getting out of the waggon he saw that a car was standing about 550 feet north upon a siding. The plaintiff then started to cross the track, going in a south-westerly direction. He was somewhat hard of hearing. He had passed between the rails and was almost over the track when a car, coming south, struck him. There was evidence that the gong did not sound, that the whistle was not blown, and the speed of the car was not slackened. The plaintiff could have seen the car approaching, had he turned and looked; the motorman must have seen him.

The trial Judge held that the plaintiff was the author of his own injury.

The appeal was heard by MULOCK, C.J.EXD., CLUTE and LATCHFORD, JJ.