

LENNOX, J.

NOVEMBER 13TH, 1920.

CITY OF OTTAWA v. GRAND TRUNK R. W. CO.

CITY OF OTTAWA v. OTTAWA AND NEW YORK R. W. CO.

*Highway—Work upon City Street Proposed to be Done by City Corporation as Local Improvement—Assessment of Land-owners—Railway Companies—Denial that Street is in Law a Highway—Assertion that Title is in Crown—Title not Asserted by Crown—Evidence—Possession—Municipal Act, secs. 432, 434, 445—Limitations Act, sec. 4 (1), (2).*

Actions for a declaration that Nicholas street, in the city of Ottawa, is in law a highway.

The actions were tried together, without a jury, at an Ottawa sittings.

F. B. Proctor, for the plaintiffs.

D. L. McCarthy, K.C., and R. G. Code, K.C., for the defendants.

LENNOX, J., in a written judgment, said that the council of the plaintiffs, the Municipal Corporation of the City of Ottawa, decided to do certain work upon Nicholas street as a local improvement, and passed the usual by-laws to provide for raising the money and assessing the land-owners, as provided by the Local Improvement Act. The defendants said that the land known as Nicholas street was still vested in the Crown, and that they were not liable as land-owners to contribute to the expense of the work. It was said by counsel for the plaintiffs that the officers of the Crown did not intend either to affirm or deny the alleged rights of the Crown or the rights claimed by the plaintiffs. The judgment in these actions, the Crown not being before the Court, would not bind it.

The alignment of Nicholas street from end to end has not always been exactly as it is to-day. There were temporary diversions long ago, at certain points, when the highway was out of repair. There was also a deliberate change of route some years ago, when one of the defendant companies, or its predecessor in title, obtained a surrender of part of what was then recognised as Nicholas street, and, in lieu of it, obtained and conveyed to the city corporation land now used as part of Nicholas street. Subject to these exceptions, the effect of the evidence was to establish that the land in question had been recognised and used as a street and highway of the city just as it is to-day; and it appeared