

appeal. The result, therefore, appears to be, that either party is entitled to treat the whole evidence as being before the Court of Appeal, so far as it bears upon the subject matter of the appeal, and either party may ask the Court of Appeal to look at any part of the evidence taken at the trial of the petition, which he may consider relevant to the appeal.

BRITTON, J.—I agree that no machinery has been provided either by the Act or Rules for the settlement of a case upon an election appeal. That being the case, the trial Judges, after having given their decision and made their report, have no jurisdiction to act further, and they cannot give any direction as to what part of the evidence given at the trial should be submitted to the Court of Appeal.

MACMAHON, J.

JANUARY 3RD, 1903.

TRIAL.

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

*Highway—Dedication—Plan—Prescription—User—Railway—Estoppel.*

The plaintiffs alleged that prior to 25th January, 1855, a large tract of land in the city of Toronto, near the mouth of the river Don, and on the west side thereof, was vested in fee in the trustees of the Toronto General Hospital; that on that day the trustees filed in the registry office for the city of Toronto a plan, No. 108, by which such tract of land was divided into blocks, lots, and streets; that on or before that day Cherry street was dedicated as and for and became a public highway; that the plaintiffs had spent large sums of money to improve Cherry street, and the defendants had been assessed by plaintiffs for part of the cost of such improvements and had paid the amounts assessed; and the plaintiffs asked to have it declared that Cherry street extends across and beyond the right of way of the defendants' railway, and that that street was dedicated and used as and for and became a public highway before the acquisition and use by defendants of their right of way.

The right of way crosses the marsh immediately south of what would be Cherry street if extended to the marsh. In July, 1890, defendants constructed gates across what the plaintiffs allege is Cherry street to prevent the public from crossing the right of way, but in the following September the gates were removed by plaintiffs' orders and have not since been replaced.

In July, 1899, the plaintiffs applied to the Railway Committee of the Privy Council to direct the defendants at their own cost to protect the public from the danger arising from the passing of trains across Cherry street. The application stands adourned until the disposition of this action.