

man were obliged to stop or slow up every time he saw a vehicle ahead of him; and it would be unreasonable that a car full of passengers should be delayed by the unnecessary obstruction of the track by vehicles or pedestrians.

No English or Canadian authority was cited for these propositions, and the Divisional Court to which the argument was addressed refused to give effect to it and dismissed the appeal.

Then in the *Gosnell* case⁹ the same counsel tried to get the Court of Appeal to adopt their view that the railway company was "quite outside the principles of the common law as to speed," and "have an absolute right of way" and go on as in the *Ewing* case. But there again the argument failed, Mr. Justice Osler remarking: "Granting that the statute gives the defendants the right of way it does not give them the exclusive right of way or the right to run their cars along the streets at any rate of speed they please without regard to the right the public also have in the use of the streets. Nothing has made it unlawful for other vehicles to travel upon the track, across it or lengthwise. The company's right cannot be compared to that of an ordinary railway company propelling its trains along its own railway track."

The railway company not being content appealed to the Supreme Court of Canada.¹⁰ The appeal was dismissed, the court holding that persons crossing the street railway tracks are entitled to assume that the cars running over them will be driven moderately and prudently, and that if an accident happens through a car going at an excessive rate of speed the street railway company is responsible. The argument for the railway company's contentions was thus dealt with by Mr. Justice Taschereau: "The appellants would contend that they are not bound by any particular rate of speed, that they can go as fast as they please, that persons entering upon, crossing, or otherwise using portions of any roadway covered by their tracks do so at their own peril, caveat viator. These astounding proposi-

9. *Gosnell v. Toronto Railway Co.* (1894), 21 O.A.R. 553.

10. *Supra*.