

impossible if the driver of each vehicle did not proceed more or less upon the assumption that the drivers of all the other vehicles will do what it is their duty to do, namely, observe the rules regulating the traffic of the streets. To cross in front of an approaching train, as was done by the deceased in Slattery's case, is one thing; to cross in front of a tram-car bound to be driven under regulations such as those above quoted, at such a place as the junction of those two streets, is quite another thing."

The reasons of the judges in the Ontario Court of Appeal appear to have been based upon the recognition of some right in the street car superior to that of the bread waggon on the street. The Judicial Committee appears to have put them upon an absolute equality.

But though I have not found that the argument for the paramount right of the street car was ever made in set terms to an English court, I have found that it was not put forward for the first time in a Canadian court in the *King* case. In the *Ewing* case⁸ eminent counsel for the railway company argued that the object of the introduction of electric railways is to obtain quick transit, and the convenience of the individual must give way to that of the public; that the cars run on fixed rails and are limited to the space in which the rails are, while vehicles and pedestrians have the whole road; that the cars thus being limited as to space and having the right of way, vehicles and pedestrians must give unobstructed passage to them, and must get out of their way; that the motorman as the car proceeds along sees from time to time numbers of vehicles and pedestrians on the street at various distances ahead of him; that he properly assumes that they will get out of the way of the car; and if they fail to do so they take upon themselves the risk of an accident, which is the consequence of their own act; that in any event he cannot be called upon to make the attempt to stop or slow up the car until he finds that they are not getting out of the way, and that quick transit would be impossible if the motor-

8. *Ewing v. Toronto Railway Co.* (1894), 24 O.R. 694.