

held liable if the negligence of each was a real cause of the accident; for either to escape liability it must be proved that the negligence of the other was the sole cause.

By an agreement between the Interurban Electric Co. and the City of Toronto, operating the Hydro-Electric System, the former undertook to "save harmless and indemnify the said corporation . . . against all loss, damages . . . which the corporation may . . . have to pay . . . by reason of any act, default or omission of the company or otherwise howsoever." An employee of the company was killed in course of his employment and in an action by his personal representative the jury found that the city and the company were each guilty of negligence which caused the accident.

Held, that the agreement did not apply to the case of damages which the city would have to pay as a consequence of its own negligence and neither relieved it from liability nor entitled it to indemnity. Judgment of the Appellate Division (36 Ont. L.R. 269), affirmed.

Appeal dismissed with costs.

C. M. Colquhoun, for appellant; *B. N. Davis*, for Lambert; *D. Inglis Grant*, for Interurban Electric Co.

Ont.]

[Dec. 30, 1916,

COUNTY OF WENTWORTH v. HAMILTON RADIAL ELECTRIC RAILWAY
CO. AND CITY OF HAMILTON.

*Portion of county road—Railway franchise—Annual payments—
Divisibility after annexation—Ontario Railway and Municipal Board—Order for annexation.*

In 1902, the County of Wentworth passed a by-law by which an electric railway company was given the privilege of running cars over a county road on paying annually a certain sum for each mile of the operated road. In 1909, territory of the county, including part of said road, was annexed to the City of Hamilton.

Held, that the agreement with the railway company remained in force in respect of the portion of the road so annexed and the county was entitled to the whole of the annual payment as if the annexation had not taken place.

The railway company, by agreement in writing, accepted the said by-law of the county and covenanted with the latter "their successors and assigns" to perform all the conditions thereof.