

take over the said lands of the said bank fronting on the south side of Rutherford avenue."

At the trial objection was taken that those purchasing from the Bank of Hamilton were concerned and ought to be parties to the action. I do not think that this is so, but the plaintiff's counsel stated his readiness to accept judgment without prejudice to the rights of any persons claiming under the bank. No person other than the plaintiff has ever made any claim, and it appears to me that under the circumstances it would be entirely unnecessary to put the parties to the expense incidental to the joining of these owners.

All that the agreement called for was an honest application by the parties to the city to accept the proposed street and to consent to its being opened. This application, according to the terms of the agreement, ought to have been made on or before the 1st of April, 1911. The application was not in fact made until March, 1912. The city then refused its consent; and the result of that refusal was, I think, to bring the agreement to an end and to leave the title as it was in the respective owners. It was not intended by this agreement to tie up this 50 feet of land forever. Upon the city rejecting the overtures the agreement was spent and at an end.

The judgment may, with the reservation that I have indicated, declare that the agreement forms no cloud upon the title of either plaintiff or defendant and now confers no right to either in the lands of the other. I think the agreement might well have more clearly provided for the event which has happened, and this justifies me in refusing to award costs to either party.

HON. MR. JUSTICE MIDDLETON. NOVEMBER 11TH, 1913.

JONES v. HAMILTON RADIAL ELECTRIC Rv. CO.

5 O. W. N. 282.

Negligence—Electric Railway—Opening in Footboard on Open Car—Passenger Falling through — Invitation to Alight—Damages—Quantum of.

MIDDLETON, J., *held*, that where the running-board of an open electric car was down and the side of the car was open and unbarred it was an invitation to alight, and where a passenger so alighting was injured by stepping into a hole in such running-board she was entitled to recover damages by reason of such injury fixed at \$2,000.