

keeping the third party before the Court for the purposes of the appeal, if they so desired: *Eckensweiller v. Coyle*, 18 P.R. 423. They did not do so, and the third party was apparently kept before the Court by the action of the plaintiff. He, and not the other respondents, should, therefore, bear whatever costs may be properly taxable to the third party other than those properly incurred by reason of the service of the notices under Con. Rules 799(2) and 811. Probably the best disposition of this question is to direct that there be no costs to or against the third party.

The third objection is, that there has been a transmission of interest by the plaintiff to some other person, and that the actions have abated or become defective. This is not established in evidence; but it is said on behalf of the applicants here that it occurred while the appeals were standing for judgment.

The proper practice in such a case is pointed out in the recent case of *Young v. Town of Gravenhurst*, 3 O.W.N. 10.

The certificate should be varied as to the third parties' costs as indicated. And there should be no costs of this application.

NOVEMBER 30TH, 1911.

*JONES v. TORONTO AND YORK RADIAL R.W. CO.

Street Railways—Injury to Person Crossing Track—Negligence—Contributory Negligence—Ultimate Negligence—Findings of Jury.

Appeal by the defendants from the order of a Divisional Court, 23 O.L.R. 331, 2 O.W.N. 979, reversing the judgment of RIDDELL, J., at the trial, 23 O.L.R. 331, 2 O.W.N. 684, and directing judgment to be entered for the plaintiff upon the findings of a jury.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

C. A. Moss, for the defendants.

J. MacGregor, for the plaintiff.

GARROW, J.A.:—The case is in this Court for the second time. When here last, the occasion was an appeal from the order

*To be reported in the Ontario Law Reports.