

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

COURT OF APPEAL.

From C.P.D.]

GOSNELL v. TORONTO RAILWAY COMPANY.

[Sept. 9.

Toronto Railway Company—Ways—Negligence.

The Toronto Railway Company have not, under their charter and their agreement with the city of Toronto, an exclusive right of way upon their tracks, or the right to run at any rate of speed they please to adopt or that the corporation please to allow. Whilst the cars of the company must not be wilfully impeded, the company are bound to recognize the rights and necessities of public travel, and so to regulate the speed of their cars that they may be quickly stopped should occasion require it.

Where, therefore, there was some evidence that an accident was the result of a car running at excessive speed, the judgment of the Common Pleas Division, upholding a verdict against the company, was affirmed.

Osler, Q.C., and *Laidlaw*, Q.C., for the appellants.

Fullerton, Q.C., for the respondent.

From FERGUSON, J.]

MCKINNON v. LUNDY.

[Sept. 9.

Will—Construction—Condition—Forfeiture—Felony.

Where land is devised upon condition that a mortgage thereon be paid by the devisee, and the testatrix herself pays off the mortgage in her lifetime, the devise is good, such a condition being a condition subsequent.

Where a devisee kills the testatrix, and is convicted of manslaughter, he does not forfeit the devise, the element of interest being, in such case, necessarily absent.

Cleaver v. Mutual Reserve Fund Life Association, (1892) 1 Q.B. 147, distinguished.

Judgment of FERGUSON, J., 24 O.R. 132, reversed.

Aylesworth, Q.C., for the appellant.

S. H. Blake, Q.C., and *Guthrie*, Q.C., for the respondents.

From C.P.D.]

BROWN v. DEFOE.

[Sept. 17.

Bailment—Warehouseman—Negligence—Collapse of warehouse.

This was an appeal by the plaintiff from the judgment of the Common Pleas Division, reported 24 O.R. 569, and was argued before HAGARTY, C.J.O., BURTON, OSLER, and MACLENNAN, J.J.A., on the 31st of May and 1st of June, 1894.