

for \$1,400 damages, and in favour of plaintiff Vassar for \$400 damages.

E. B. Edwards, K.C., for appellants.

A. B. Aylesworth, K.C., for plaintiffs.

THE COURT (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.), held that the appellants were bound to take proper precautions to prevent persons from travelling along the old way; that, as there was no fence or barrier at the point of intersection to warn travellers, defendants were liable for the injuries to plaintiffs; that the trial Judge's finding that the injuries to plaintiffs were not caused by their own carelessness or intoxication was supported by the evidence; and that the damages were not excessive.

Appeal dismissed with costs.

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DECEMBER 15TH, 1904.

C.A.

CITY OF TORONTO v. GRAND TRUNK R. W. CO.

*Way—Highway—Dedication—Plan—Deed—User—Evidence  
Railway.*

Appeal by plaintiffs from judgment of MACMAHON, J., 2 O. W. R. 3, in favour of defendants.

J. S. Fullerton, K.C., for appellants.

W. Cassels, K.C., and W. Gow, for defendants.

The judgment of the Court (OSLER, MACLENNAN, MACLAREN, J.J.A.), was delivered by

MACLENNAN, J.A.—A public street called Cherry street has for a good many years crossed the track of defendants at the south-east front of the city, and, the traffic having become considerable, plaintiffs applied to the Railway Committee of the Privy Council to require defendants to erect gates to protect the public crossing the line. Upon this the question arose, which of the parties should be charged with the expense of providing and maintaining such protection, and the Railway Committee determined that the question should depend on whether the street was a lawful highway when the railway was first constructed across what is now admitted to be a lawful highway, and which was in or about the year 1858. This action was brought to determine that question. . .