

I, therefore, think that the provision in the plaintiffs' charter purporting to entitle them to impose tolls or other charges is ultra vires the State Legislature and null and void. The permit granted by the War Department does not assist the plaintiffs; it merely sanctions an extension of their works, subject to the condition that "the company shall not exact tolls or charges for the passage of logs or rafts or other forms of navigation."

Mr. Shepley sought to shew that this condition was void. It is not, however, necessary to determine that point; but it is sufficient to say that nothing in the permit authorises the imposition of tolls or other charges.

I, therefore, think that the plaintiffs have no legislative authority to exact tolls or other charges.

Notwithstanding the existence of the plaintiffs' works, the navigation of the river for all purposes remains free to each citizen of the two countries, unless he shall by contract, express or implied, deprive himself of such right.

The defendants have not so deprived themselves; and, therefore, the plaintiffs are not entitled to maintain this action, which is dismissed with costs.

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DIVISIONAL COURT.

SEPTEMBER 12TH, 1912.

HERRON v. TORONTO R.W. CO.

*Street Railways—Injury to Person Crossing Track—Negligence—Causal Negligence—Ultimate Negligence—Findings of Jury—Uncertainty—New Trial.*

Appeal by the plaintiff from the judgment of MEREDITH, C.J. C.P., after trial with a jury, dismissing the action with costs.

The action was to recover damages for personal injuries sustained by the plaintiff, by reason of a car of the defendants striking the wheel of a buggy in which he was driving, whereby he was thrown out and hurt.

The plaintiff's horse and buggy were standing on the north side of Dundas street, in the city of Toronto, east of Margueretta street, the horse facing west. Coming out from a shop, the plaintiff intended to drive away; he picked up the weight, put it into the buggy, and stood by the side of the buggy till a car went past east. As he picked up the weight, the horse turned his head to the car to go across; the plaintiff got into the buggy, and sat there till another car went by to the east. Then he picked up