

J. H. Rodd and F. D. Davis, for the plaintiffs.

A. R. Bartlet and G.A. Urquhart, for the defendants.

LENNOX, J., read a judgment in which he set out the history of the events leading to this action, which was begun on the 19th October, 1915, and the facts of the case, and referred to the judgment of the Second Divisional Court of the Appellate Division in the Mitchell case, above-mentioned.

The learned Judge then stated his opinion that the defendants had not a legal right to do the acts complained of; that they were wrongdoers in entering upon and excavating the streets referred to; that the plaintiffs, by reason of the defendants' acts, were compelled to expend money to restore the streets and put them in a reasonable state of repair and make them safe and reasonably convenient for public use; the plaintiffs were entitled to damages, and also to a declaration that the defendants had no right to use or occupy the streets from Sandwich street to London street for the construction or operation of a street railway thereon, and to an injunction against the defendants.

Reference to secs. 6, 250, and 251 of the Ontario Railway Act, 3 & 4 Geo. V. ch. 36; sec. 4 of the Municipal Franchises Act, 2 Geo. V. ch. 42; *Little v. Wallaceburgh* (1876), 23 Gr. 540; *In re Great Western R.W. Co. and Corporation of North Cayuga* (1872), 23 U.C.C.P. 28; *Halsbury's Laws of England*, vol. 27, p. 184, paras. 356, 357, 358, and notes; *Maxwell on the Interpretation of Statutes*, 5th ed., pp. 485, 486, 487, and cases collected.

Judgment for the plaintiffs for \$900 damages. This includes restoring the streets to as good a condition as they were in on the 6th April, 1914. If, however, in the ultimate disposal of this action it should be determined that the defendants have a right to use these streets in the way proposed, the further expenditure spoken of will not be necessary, and the plaintiffs should be confined to the expenditure already made, placed at \$500.

There should be a declaration that the defendants were not and are not entitled to use or occupy the streets in question (not including London street) for the construction or operation of a railway, and an injunction restraining them from doing so.

The plaintiffs should have the costs of the action, including the costs of the appeal from the order of the Railway Board.