

cars were not got out until the end of April. The trial Judge found in favour of the plaintiffs, and assessed the damages at \$1,000. The defendants appealed.

Wallace Nesbitt, K.C., and H. E. Rose, for appellants.

G. F. Shepley, K.C., and J. Baird, for plaintiffs.

THE COURT held, OSLER, J.A., dissenting, that the mill company were the consignees of the scrap iron, and had a right to put an end to the transitus at Swansea by refusing to receive it, and there was no necessity for the defendants to tender the goods at Sunnyside.

Held, however, MACLENNAN, J.A., dissenting, that the defendants were liable to the plaintiffs in damages for not keeping the cars, after the refusal, in such a position that the plaintiffs could unload them and remove their property.

[The appeal was heard by ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, and LISTER, JJ.A. LISTER, J.A., died while the case was under consideration. A majority of the remaining members of the Court agreed upon a judgment varying that of the trial Judge by limiting the plaintiffs' recovery to damages suffered by reason of the delay up to the time that the defendants had placed the cars in such a position that the plaintiffs could take their goods.]

Lobb & Baird, Toronto, solicitors for plaintiffs.

John Bell, Belleville, solicitor for defendants.

APRIL 10TH, 1902.

C. A.

CANADIAN PACIFIC R. W. CO. v. CITY OF TORONTO.

*Municipal Corporation — By-law — Vehicles Standing on Highway
—Agreement with Railway Companies—Contravention of—In-
junction—Quashing By-law not in Public Interest.*

Appeal by defendants from judgment of STREET, J., consolidating an action for an injunction with a summary application to quash a by-law of defendants, and granting the injunction and the motion. The plaintiffs were the Canadian Pacific and Grand Trunk Railway Companies and one Leonard, a ratepayer of the city.

By the Municipal Act, R. S. O. ch. 223, sec. 559, subsec. (3), councils of cities, towns, and villages are empowered