

The appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

H. E. Rose, for plaintiff, appellant.

J. D. Spence, for defendant railway company, respondents.

Their Lordships' judgment was delivered by

HON. SIR WM. MULOCK, C.J.Ex. (v.v.):—The evidence is very slight as to John street crossing the tracks, but nevertheless there appears to be some evidence, and if not controverted it is sufficient.

John street clearly comes down to the tracks, and to all appearance crosses over there. The street crossing at the tracks appears not to have been boarded there as the law requires; but that does not make it not a highway across the right-of-way.

The learned trial Judge's finding is that the horse was injured at John street on the public highway; the horse running into the engine.

We agree, and therefore think that this appeal must be dismissed with costs.

*Appeal dismissed.*