

Ont.] TOWNSHIP OF MCKILLOP v. TOWNSHIP OF LOGAN. [Oct. 3.
*Ditches and Watercourses Act, 1894 (O)—Owner of land—Declaration of
 ownership—Award—Defects—Validating award—57 Vict. c. 55; 58
 Vict. c. 54 (O).*

A lessee of land with an option to purchase the fee is not an owner who can initiate proceedings for construction of a ditch under the Ditches and Watercourses Act, 1894, of Ontario. *Township of Osgoode v. York*, 24 S.C.R. 282, followed.

If the initiating party is not really an owner the filing of a declaration of ownership under the Act will not confer jurisdiction.

Sec. 24 of the Act which provides that an award thereunder, after expiration of the time for appealing to the judge, or after it is affirmed on appeal, shall be binding notwithstanding any defects in form or substance either in the award or any of the proceedings, does not validate an award or proceedings under the Act where the party initiating the latter is not an owner.

Garrow, Q.C. and Thompson, for respondent.

Ont.] ROWAN v. TORONTO STREET RY. CO. [Oct. 3.
*Negligence—Trial of action—Contributory negligence—Findings of jury—
 New trial—Evidence.*

On the trial of an action against a street railway company for damages in consequence of injuries received through negligence of the company's servants, the jury answered four questions in a way that would justify a verdict for the plaintiff. To the fifth question, "Could Rowan, by the exercise of reasonable care and diligence have avoided the accident?" the answer was, "We believe that it could have been possible."

Held, reversing the judgment of the Court of Appeal, that this answer did not amount to a finding of negligence on the part of the plaintiff as an approximate cause of the accident which would disentitle him to a verdict.

Held, further, that as the other findings established negligence in the defendants which caused the accident and amounted to a denial of contributory negligence; as there was no evidence of negligence on plaintiff's part in the record; and as the court had before it all the materials for finally determining the questions in dispute, a new trial was not necessary.

Aylesworth, Q.C. and Ross, for appellant. Osler, Q.C., for respondent.