

THE GRAND TRUNK RAILWAY COMPANY v. FITZGERALD.

1891

Jan. 26.

June 22.

Railway Co.—Injury to property by—Question of fact—By whom work complained of was done.

APPEAL from a decision of the Court of Appeal for Ontario affirming the judgment of the Divisional Court in favor of the plaintiff (respondent).

The action in this case was brought in consequence of an embankment being built on the highway in front of plaintiff's property by which, the plaintiff alleged, he was deprived of access from his property to the street. The only question raised on the appeal was whether or not the defendants were the proper parties to indemnify the plaintiff. The defendants claimed that the work was done by the Peterborough & Chemong Lake Railway Co. who were the parties, if any, liable to the plaintiff.

The evidence at the trial showed that the Grand Trunk Railway Co. had, by agreement, the use of the railway line in connection with which this embankment was built; that its president and other officers owned the greater part of the stock of the Peterborough & Chemong Lake Railway Co. under whose charter the line was built; that the building of the embankment was authorized by a resolution of the directors of, and paid for by, the Grand Trunk Co.; that the engineer in charge of the work received his instructions from the president of the Grand Trunk Co. of which he was an officer; and that the road master and foreman were men in the employ of the Grand Trunk Co.

Under this evidence the courts below held that the

1891 defendants were liable to the plaintiff as wrongdoers.
THE GRAND The Supreme Court held that this decision was justi-
TRUNK fied and affirmed it on appeal.

RAILWAY
COMPANY

v.

Appeal dismissed with costs.

FITZGERALD.

W. Cassels Q.U. for appellants.

Edwards for respondents.
