

COUNTY COURT—HALDIMAND.

DOUGLAS v. GRAND TRUNK RY. CO.

Railway—Cattle on track—Liability—Fences.

The plaintiff's helper, while escaping from the stable of an hotel adjoining the defendants' railway, got on to the railway track through a hole in defendants' fence, and finally reached a bridge, and, in its attempt to cross over, fell from it and had to be slaughtered.

Held, following *Young v. Erie & Huron Ry. Co.*, 27 O.R. 530, that damages were not recoverable as any neglect or non-observance by the railway is provided for by 53 Vict. c. 28, s. 2(D.), and is limited to injury caused to animals by the company's trains and engines; and, further, that there being no common law liability to fence, the obligation is to be measured by the language of the statute. See *James v. Grand Trunk Ry. Co.*, 10 O.L.R. 127. Judgment for defendants, but without costs.

[Cayuga, Jan. 14—Douglas, Co. J.]

The facts of the case are sufficiently set forth above.

Arrell, for plaintiff. The defendants were negligent in not maintaining their fence as required by law, and were therefore responsible in damages under the provisions of section 427 of the Railway Act. See, also, sections 4, 254, 294 and 295.

W. E. Foster (now of Montreal), for defendants. Section 427 does not apply, because the remedy is provided by the special Act, 16 Vict. c. 37, s. 2.

DOUGLAS, Co. J.:—At the time that *Young v. Erie & Huron Ry. Co.*, 27 O.R. 530 was decided, there was a provision in the Railway Act similar to section 427 of the present Railway Act, and I feel that I am bound by the decision of the Chancellor in this case. His Lordship says: "As to damages found by the jury in respect of the trouble incurred in watching cattle on account of the bad state of the fences, I do not think these are recoverable as a consequence of the neglect on the part of the company to observe the directions of the statute. The penalty that follows non-observance is given by the statute 53 Vict. c. 28, s. 2(D.), and it is limited to injury caused to animals by the company's trains and engines. There is no common law liability to fence, and the obligation being imposed by statute, the responsibility is to be measured by the language of the statute." Osler, J., seems to agree with this view in *James v. Grand Trunk Ry. Co.*, 10 O.L.R. 127.