

Act (8 & 9 Vict., c. 20), s. 68. (See Dominion Railway Act 51 Vict., c. 29, s. 194) but the Divisional Court, (Darling and Channell, JJ.) affirmed the judgment of the County Court dismissing the action, on the ground that the cattle were not on the highway for a lawful purpose, but had strayed thereon, and therefore the railway company was not bound to fence against them. It would seem that in Canada, under the Dominion Railway Act as amended by 53 Vict., c. 28, s. 2, a railway company under such circumstances is not liable to the owner for cattle so killed, unless there be some law authorizing the cattle in question to run at large; see *Duncan v. C.P.R.*, 21 Ont. 355; and *Nixon v. G.T.R.*, 23 Ont. 124.

MASTER AND SERVANT—INJURY TO WORKMAN ON HIS WAY TO WORK—
ACCIDENT ARISING OUT OF, AND IN COURSE OF, EMPLOYMENT.

In *Holness v. MacKay* (1899) 2 Q.B. 319, an attempt was made to make an employer liable for an injury sustained by his workman in the course of going to his work, as being an accident arising out of, and in the course of his employment. The facts were that the defendants were contractors for ballasting the siding of a railroad. The siding could only be reached by walking a considerable distance through the premises of the railway company, and the workmen were advised by the defendants, with the consent of the railway company, to enter by a gate from which a path led by the side of the track to the siding which was being ballasted; it was necessary in following this route to go upon the track. On a foggy morning a workman was run over some minutes before the time for commencing work, on the main line 150 yards from the siding. The Court of Appeal (Smith, Williams, L.J.J., Romer, L.J. dissenting), held that the action failed, on the ground that it was no part of the contract of employment, that it should include the time in getting to and from the work, and that the defendants owed no duty to the workman while proceeding to or from his work, and that therefore the accident did not arise in the course of his employment. Smith, L.J. was also of opinion that a workman who is injured in a place not under his employer's control while going to, or returning from, his work, is not within the Workmen's Compensation Act 1897, (60 & 61 Vict., c. 37), and a fortiori he could not recover under the Ontario Act (R.S.O. c. 160). Romer, L.J. bases his opinion on the ground that the workman as soon as he