

DIARY FOR OCTOBER.

1. Tues...County Court Non-Jury Sittings except in York. Maritime Court sits. William D. Powell. 5th C.J. of Q.B., 1816.
6. Sun.....*Sixteenth Sunday after Trinity.*
7. Mon....County Court Sittings for Motions, except in York. Henry Alcock, 3rd C.J. of Q.B., 1802. R. A. Harrison, 11th C.J., of Q.B., 1875.
12. Sat....County Court Sittings for Motions, except in York. end. Columbus discovered America, 1492.
13. Sun.....*Seventeenth Sunday after Trinity.* Battle of Queenston, 1812. Lord Lyndhurst died, 1863, æt. 92.
15. Tues...English law introduced into Upper Canada, 1793.
18. Fri.....St. Luke.
19. Sat....County Court Sittings for Motions in York end. Last day for notices for Prim. Exam.
20. Sun.....*Eighteenth Sunday after Trinity.*
21. Mon....County Court Non-Jury Sittings in York. Battle of Trafalgar, 1805.
22. Tues...Supreme Court of Canada sits.
23. Wed....Lord Lansdowne, Governor-General, 1883.
27. Sun.....*Nineteenth Sunday after Trinity.* Hon. C. S. Patterson, appointed Judge of Supreme Court, 27th October, 1888. Hon. Jas. MacLennan appointed Judge of Court of Appeal, 27th October, 1888.
29. Tues...Primary Examinations.
31. Thu....Admission of graduates and matriculants. All Hallows' Eve.

Reports.

ONTARIO.

FIRST DIVISION COURT, COUNTY OF RENFREW.

(Reported for THE CANADA LAW JOURNAL.)

RATHWELL v. CANADA PACIFIC RAILWAY CO.

Action to recover value of cattle killed by train—Adjoining owner—Township surveyed for settlement and organized—51 Vict., c. 29, s. 194—Township by-law permitting cattle to run at large.

Certain cattle of the plaintiff, whose lands did not adjoin the railway, were at large in the township of Rolph, through which the unfenced railway of the defendants runs. The township is surveyed and organized for settlement, and a by-law of the municipality permits cattle to run at large. The cattle were killed by defendants train.

Held, that the by-law relates only to roads and not to unenclosed lands of private owners, and that the cattle were wrongfully on the track of the railway.

Held, also, that 51 Vict., c. 29, s. 194, gives no right to others than adjoining owners, and those in privity with them, by which they can recover damages through neglect of the Company to fence their line.

DEACON, Co.J., PEMBROKE.

This was an action against the defendants Company to recover \$60, the value of two cows of plaintiff, killed by an engine and train of defendants on that part of their line which crosses lot No. 19, in the 3rd concession of Rolph,

and came up for trial at the last May sitting of this court, when the counsel for the parties agreed upon the following statement of facts, and arranged for a subsequent appointment to argue the questions of law arising thereon :

1. Plaintiff is the occupant of lot 18 in the 3rd concession of Rolph.

2. Said lot 18 does not touch the railway track within 310 feet. The railway crosses lot 19 and not lot 18.

3. Plaintiff is neither owner nor occupant of lot 19. Reference to plan or sketch annexed to statement.

4. Township of Rolph is organized and surveyed for settlement.

5. There are no fences.

6. Plaintiff's cattle were killed on the railway, having got thereon from lot 19, having first come from 18 on to 19. Accident occurred on 22nd October, 1888.

7. The value of the cattle, \$50.

8. Cattle were, at the date of the accident, free commoners in Rolph.

9. No negligence either way.

Burritt for the plaintiff.

White for the defendant.

DEACON, Co.J.—The counsel for the plaintiff conceded that if the law had stood as it was declared to be in the cases of *Conway v. C.P.R. Co.*, 12 Ont. Ap. Reports, 708, and *Davis v. C. P.R. Co.*, same Vol., 724, the plaintiff would not be entitled to recover, as the cattle had gone upon the track from lot No. 19, of which he was not occupant and to which he had no shadow of a claim. His own lot No. 18, not being in any part touched by the line of railway, and he being in no sense an adjoining proprietor.

But he argued that by the effect of the 194th section of the Railway Act, 51 Vict., chap. 29, which reads as follows, "When a municipal corporation for any township has been organized, and the whole or any portion of such township has been surveyed and subdivided into lots for settlement, fences shall be erected and maintained on each side of the railway through such township, of the height and strength of an ordinary division fence with openings, or gates, or bars, or sliding or hurdle gates, of sufficient width for the purposes thereof, with proper fastenings at farm crossings of the railway, and also cattle guards at all highway crossings suitable and sufficient to prevent cattle and other animals from getting on the railway."