

The liability for this negligence might well be rested on the common law, even if the statute (as to fencing railways) is to be read as counsel contended it must since *McKay v. Grand Trunk R. W. Co.*, 5 O. L. R. 313, 2 O. W. R. 57, 34 S. C. R. 81.

The Railway Act of 1903, I think, by its sec. 194, robs the nice question propounded by counsel for defendants, of whether fences are only to be kept up in townships and not in towns or cities, of any further general importance.

I might point out that under the authority of *The Rediva*, 5 P. D. 1, it is quite possible that the stay of execution in such a case rests with the Court of Appeal or a Judge thereof; and, if so, it has been passed upon by Mr. Justice Osler refusing to interfere.

I think the appeal must be allowed and the motion to stay execution be dismissed, and in each case of course with costs.

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MACLAREN, J.A.

AUGUST 23RD, 1904.

WEEKLY COURT.

RE SOLICITOR.

*Solicitor—Costs—Taxation—Retainer — Negligence — Costs Paid by Client to Opposite Party in Litigation—Reimbursement by Solicitor—Account—Items.*

Appeal by solicitor from report of Master at Brampton upon a taxation of solicitor's costs and taking accounts between solicitor and client.

The appeal was heard by MACLAREN, J.A., sitting for a Judge of the High Court.

D. O. Cameron, for solicitor.

S. H. Bradford, for client.

MACLAREN, J.A.—On the application of the client eight bills of costs were referred for taxation to the local Master at Brampton, who was to take the account between the parties. By consent of the parties all questions of retainer, carelessness, impropriety, and negligence in the conduct of the business to which the bills related, were referred to the