

An examination of the conduct of Thomas McConnell shortly before, and also subsequent to, the transaction on the 20th December, 1906, is helpful, as indicating his view of the transaction.

[References to the documentary and oral evidence.]

Thomas McConnell died on the 23rd July, 1912. His conduct in acquiescing in the oft-repeated notice of the defendant's interpretation of the true nature of the transaction, must be construed as an admission that the transaction of the 20th December, 1906, in substance, was an extinguishment of Thomas McConnell's equity of redemption, and secured to him merely an option to repurchase on the terms set forth in the agreement; and I do not think that the plaintiff, a mere volunteer, can be heard to make a claim inconsistent with the attitude of Thomas McConnell, through whom she claims.

The plaintiff also charges undue influence, but wholly fails to establish the charge, which is unsupported by any evidence.

I, therefore, think this appeal should be dismissed with costs.

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OCTOBER 27TH, 1913.

\*PALO v. CANADIAN NORTHERN R.W. CO.

*Railway—Animal Killed on Track—Finding of Fact of Trial Judge—Reversal by Appellate Court—Absence of Fences—Duty of Railway Company—"At Large"—Negligence of Owner—"Wilful Act"—Railway Act, R.S.C. 1906 ch. 37, sec. 294, sub-sec. 4 (9 & 10 Edw. VII. ch. 50, sec. 8).*

Appeal by the plaintiff from the judgment of the Judge of the District Court of the District of Thunder Bay, dismissing the action, which was brought to recover damages for the loss of a horse of the plaintiff's, which got upon the defendants' track, owing, as the plaintiff alleged, to their omission to fence.

The plaintiff was a farmer, residing on his farm; the defendants' line of railway ran westerly along its south side. His house was in a clearing, fenced on all sides. At the west side of this clearing was the stable, the west door of which opened into another portion of the plaintiff's land, which portion was unfenced and extended down to the defendants' line of railway. The plaintiff permitted the horse to pasture on this unfenced portion of his land.

\*To be reported in the Ontario Law Reports.