Held, under the circumstances of this case, and following *Clegg* v. *The Grand Trunk Railway Company*, 10 O. R. 713, and *Darling* v. *The Midland Railway Company*, 11 P. R. 32, that the defendants were no longer within the operation of the Ontario Statutes.

Held, also, that a notice requiring the lands given under the Dominion Railway Act was not a sufficient notice under the Provincial Railway Act.

Robinson, Q.C., and *Collier*, for the plaintiff. *Aylesworth* and *Towers*, for the defendants.

Boyd, C.] [April 9.

ST. THOMAS *v.* CREDIT VALLEY RAILWAY.

Contract—Damages for breach—Railways—Failure to run trains to point contracted for.

An appeal from the report of the Master at London, assessing the damages which the plaintiffs were entitled to for breach by the defendants of their agreement to establish a station at Church Street, in the west end of the city of St. Thomas, and run trains from their station in the east end of the city to the said station at Church Street.

Held, that the matter must be referred back, as the law and evidence did not warrant the conclusion to which the Master had come. The failure to keep up the station at Church Street might have, and might be expected to have, the effect of rendering property in that neighbourhood less desirable than it would otherwise be; and though the actual depreciation is a matter which pertains to the property owners and not to the city as damages, yet the lessened taxation resulting from this depreciation is not too remote a fact for consideration upon the reference.

It is clear that the personal loss or inconvenience suffered by travellers or citizens from the abandonment of the station at Church Street, or the actual depreciation in value of the land individually owned in that neighbourhood, could not be reckoned as constituents *per se* of the damages suffered by the corporation.

Stated broadly, the inquiry was, how much less benefit had been received by the municipality by reason of the railway service at one station being discontinued, and the difficulty of ascertaining the amount was not a reason for withholding relief altogether.

If the Company admitted that the station on Church Street was to be given up for all future time, the damages should be assessed once for all, which might be done either by fixing one solid sum, or by directing a yearly payment. The loss in taxation resulting to the city from the depreciation in taxable property which could be traced to, or reasonably connected with, the Company's default, formed a yearly standard which might be capitalized so as to fairly represent the money compensation to which the plaintiffs are entitled.

Dalton McCarthy, Q.C., and *Ermatinger*, Q.C., for the plaintiffs.

C. Robinson, Q.C., and *Wells*, for the defendants.

Boyd, C.] April 23.

HEFFERMAN *v.* TAYLOR.

Will—Life tenant—Power to rent—Trustees.

A testator gave all his estate, real and personal, to trustees upon trust to allow and give the use thereof to his wife during life for her support.

Held, that the wife had the right to rent the farm and deal herself directly with the tenant during her life. In this case, those entitled in remainder were the adult children of the life tenant, and no active duties were cast by the will upon the trustees during the continuance of the life estate, and such being the case, the court would give effect to the usual incidents of an estate for life by which the tenant can occupy it or let it, or otherwise dispose of it as seems best to that tenant.

Held, therefore, that a lease theretofore made by the trustees without the sanction of the widow, though there was no evidence of *mala fides* on their part, must nevertheless be set aside, and possession of the property given to the widow or her nominee.