

Ct. Appeal.]

NOTES OF CANADIAN CASES.

[Ct. Appeal.]

to lots 4 and 6 was for damages suffered by land having been taken in the exercise of the powers granted for the railways, within the meaning of the Consolidated Railway Act, 1879, s. 9, s. ss. 10 and 12 (D.).

Held, also, that there was nothing to exonerate the defendants in the fact that they had the leave of the municipality for doing as they did.

Held, also, that the court had no power to compel a reference to an officer of the court to ascertain these damages, but only to compel an arbitration, to which the plaintiff was entitled under the Act.

Quære, per OSLER, J.A.—Whether the compensation clauses of Part I. of the Consolidated Railway Act, 1879, apply to the defendant's railway; but held that they apply to the Welland Branch of the defendant's railway, on which the work in question was done?

Cattanach, for the appellants.

McClive, for the respondent.

Rose, J.]

[Feb. 1.]

PRESTON V. THE CORPORATION OF
CAMDEN.

*Drainage by-law—Damages—Lawful act done in
negligent manner.*

The defendants deepened and widened a drain through the plaintiff's land, and threw up the earth on either side, and left it there. The plaintiff sued for damages to his land, etc., by reason of such throwing up of the earth. It was admitted that the work was done under a by-law, passed under s. 576 of the Municipal Act, 1883, and it was not suggested that the by-law was defective in form or substance or for want of authority to pass it. The jury found that the defendants were not guilty of any negligence, but that the plaintiff had suffered damage by the execution of the work.

Held, reversing the decision of Rose, J., that upon these findings, judgment should have been entered for the defendants; that a cause of action could not accrue from the doing of a lawful act, unless in a negligent manner, and that the plaintiff's remedy, if any, was by arbitration to obtain compensation under the Municipal Act of 1883, s. 591.

Matthew Wilson, for the appellants.

Pegley, for respondent.

C. C. Kent.]

Feb. 1.

STEINHOFF V. THE CORPORATION OF KENT.

Negligence.

The defendants were the owners of a bridge over a navigable stream, having in it a draw or swing to allow vessels to pass through. A horse of the plaintiff broke away from the person in charge of him, and ran from a distance of two miles to the bridge, reaching it in broad daylight just as the bridge was opened, rushed into the gap and was drowned.

Held (affirming the judgment of the court below), that the loss of the horse was owing to no negligence on the part of the defendant in failing to guard the approach to the bridge or to use signals, and the plaintiff could not recover.

J. S. Fraser, for appellant.

Perley, for the respondents.

C. P. Div.]

[Feb. 1.]

MCGIBBEN V. NORTHERN AND NORTH
WESTERN RY. CO.

Negligence—Fire from railway engine.

The judgment of the court below, 11 O. R. 307, was reversed on appeal.

The action was for negligence whereby, as alleged, fire escaped from the defendants' engine, and destroyed the plaintiff's property.

There was evidence that the engine had passed just before the fire in a certain manure heap (which communicated it to the destroyed property) was perceived; that a strong wind blew across the track towards the manure heap; that there was no other known source from which the fire was at all likely to have come; that the wind was in the wrong direction to have carried sparks from a steam saw-mill close by, and that cinders were found in the straw by those who went to put out the fire.

Held, that from these facts the jury would clearly have been justified in finding that the mischief was caused by the engine.

The evidence further showed that the engine had run ninety miles without the ash-pan being emptied; that ignited substances were found upon the manure heap, which, being too large to pass through the net of the smoke-