

reported in R. J. Q., 4 B. R. 235. The notes of Mr. Justice Hall, who delivered the judgment of the majority of the Court, were not received in time for insertion in the report. They are as follows:

HALL, J.:—

The appellants' line of railway passes through respondent's farm in the parish of Laprairie, and an ordinary farm crossing furnishes communication between the portions of the farm thus separated. On the 2nd of December, 1890, Henri Bourassa, respondent's nephew, and in his employ, had occasion to move four horses and colts from one side of the farm to the other. For this purpose he opened the two gates at the crossing, and without fastening them open in any way, went in search of the horses, which he attempted to drive loose over the crossing, without bridles or halters. They went through the first gate on to the railway, and then took to the track, owing, as this Henri Bourassa says, to the second gate having become closed during his absence. The horses ran along the track for some distance, and were finally run into and killed at a culvert by appellants' mixed train—passengers and freight—coming from St. John's to Montreal. The present action is for the value of the horses, which respondent alleges were killed by the fault and negligence of appellants' employees in not stopping the train at sight of the animals. The appellants pleaded that the negligence was entirely on the part of the respondent's employee, in attempting to drive four loose horses across their track, and that their trainmen did all in their power to stop the train after sighting the animals, but being on a down grade, were unable to do so entirely before reaching the culvert where the horses were bunched together by the bridge in front and the converging fences on each side, making escape impossible.

After *enquête* judgment was rendered in the Superior Court maintaining plaintiff's action for the following reasons: Because the gate was closed by a sudden gust of wind, which constituted an uncontrollable *cas fortuit*; Because the employees of the railway train saw at the distance of a mile that there was an obstruction of some kind upon the track and did not take immediate steps to control the speed of the train; Because at the distance of three quarters or at least half of a mile, they could make out that the objects upon the track were horses, and even then they did not