

against the common law. In fact Mr. Justice Sedgewick expressly declares as his view that the Railway Act contains the whole law respecting the management and operation of railways, and the opinion of Mr. Justice Davies, concurred in by the Chief Justice and Killam, J., is almost as explicit in the same direction.

It is not necessary for the purposes of the matter under consideration to analyze the opinions of these learned judges and see how they will stand the test of criticism. It is sufficient to say that as the latest decision of the Supreme Court, *G.T.R. Co. v. McKay* settles the law in Canada as to the duty of a Railway Co. in respect to highway crossings in thickly peopled districts, and so far as the opinions of four judges are concerned it appears to lay down the rule that the common law can no longer be invoked in any railway case.

Though this question has never come directly before the Judicial Committee of the Privy Council it has been incidentally referred to in two or three cases, and the remarks of their Lordships on the subject may be usefully quoted as indicating a view not entirely in accord with that of the Supreme Court in *McKay's case*.

In *C.P.R. Co. v. Roy* (1902), A.C. 231, the Courts in Quebec had held that their Civil Code made the railway companies liable for damages by fire even without negligence. In reversing this the Lord Chancellor said, in giving judgment for the committee: "The law of England, equally with the law of the Province, in question, affirms the maxim, *sic utere tuo ut alienum non lædas*, and the whole case turns, not upon what was the common law of either country, but what is the true construction of plain words." And in *E. & S. A. Tel. Co. v. Cape Town Tramway Companies* [1902], A.C. 391, Lord Robertson says: "The question of common law is thus raised directly (as well as indirectly in the just construction of the statutory provisions.)" These observations are only quoted as indicating that the committee apparently did not consider all the prior law to be swept away by a Railway Act.

But the most significant indication of this view is found in the case of *Madden v. Nelson & Fort Sheppard R. Co.*, [1899], A.C. 629. In that case the Supreme Court of British Columbia had, after discussing the principles governing repeal of statutes and pointing out that the previous state of the law can only be altered