

of the city. *City of Toronto v. Metropolitan R.W. Co.*, 367.

2. *Tolls Not Fixed by Governor-General—Penalty—Right to Recover Back*—51 Vict., ch. 29, s. 227 (D)—*County Court Appeal—Setting Down—R.S.O. ch. 55, s. 57—Cons. Rule, 795.*

—The fact that a railway company has not had its tolls approved by the Governor-General under 51 Vict., ch. 29, s. 227 (D), does not in itself entitle a passenger who has paid such tolls to recover three times the amount under section 290, in the absence of evidence that the fares charged were unreasonable or excessive; nor is such passenger entitled to recover back the amount so paid by him as paid under a mistake of fact, where it was such as in equity and good conscience he ought to have paid.

Neither R.S.O. ch. 55, s. 57, nor Cons. Rule, 795, prohibit a County Court appeal being set down to be heard for a sitting of the Divisional Court, commencing within thirty days from the decision complained of. *Lees v. Ottawa and New York R.W. Co.*, 567.

3. *Culvert—Duty to Fence—Negligence.*—A natural water-course, which flowed through a culvert under a railway track, dried up in the summer, and to prevent cattle from passing through it the railway company had placed gates in the culvert, which they neglected to keep

up, and by reason of the absence thereof, of which the company was duly notified, the plaintiff's cattle, which were lawfully pasturing in a field on one side of the track, got through the culvert into a field on the other side of the track, and from thence on to the railway track, where they were injured:

Held, that the defendants were bound to keep the water-course, as part of their railway, properly fenced, and were liable for the damages sustained by the plaintiff. *James v. Grand Trunk R.W. Co.*, 672.

4. *Mortgage—Conveyance of Equity by Mortgagee—Expropriation Proceedings—Right of Mortgagee to Notice of.*

A mortgagee who has conveyed his equity of redemption subject to the payment of the mortgage is not entitled to notice of expropriation proceedings taken by a railway company with regard to the mortgaged lands; and the absence of such notice does not constitute any defence to an action brought against him by the mortgagee on a covenant to pay the mortgage money. *Farr v. Howell*, 698.

Street Railway—Frightening Horses—Duty of Motor Man.
—See STREET RAILWAY.

RAILWAY COMPANY.

1. *Carriage of Goods—Condition Limiting Liability for Loss*—51 Vict., ch. 29 (D).—