paid as a deposit on the purchase of certain lands, holding that no question as to the title to land arose.—*Crawford* v. *Sevey*, 17 O. R. 74, referred to. *Barnett* v. *Montgomery* (1913), 25 O. W. R. 846; 5 O. W. N. 884.

Grounds for — *Questions passed on by Appellate Division — Late application —Costs.*]—Lennox, J., refused an order for prohibition where the application was made upon grounds which were practically by way of appeal from a decision of the Appellate Division and where in any case it was doubtful if there were anything left to prohibit. *Avery* v. *Cayuga* (1913), 25 O. W. R. 482; 5 O. W. N. 471.

RAILWAY.

Carriage of goods—*Contract for—Delivery to consignee without surrender of bill of lading—Damages caused by—Liability for.*] — Falconbridge, C.J.K.B., *held*, that where a railway company delivered merchandise to a consignee without obtaining surrender of the bill of lading therefor they were liable to the consignor for any damage occasioned him by such wrongful act.—*Tolmie* v. *Michigan Central Rw. Co.*, 19 O. L. R. 26, referred to. *Lemon* v. *Grand Trunk Rw. Co.* (1913), 25 O. W. R. 720; 5 O. W. N. 813.

Deviation of line — *Order of Ontario Railway and Municipal Board—Jurisdiction — Right of appeal—Preliminary opinion of Board not appealed from—No right to do so — Jurisdiction of municipalities over highways—Meaning of "Deviation"—Street railways—What constitute—Franchise—Necessary extension of—Statutory powers of company — Rights of one municipality as successor of another — Construction of statutes.*]—Court of Appeal, *held*, 28 O. L. R. 180, that under the various statutes relative to the Toronto and York Radial Railway Company and their predecessors in title, the Metropolitan Railway Company, and their agreements with the county of York, the said company had no right to deviate their line of railway from the west side of Yonge street where it had been constructed and to operate it along what was termed a private right-of-way parallel thereto, which right-of-way, however, crossed five highways within the municipal limits of the city of Toronto.—Privy Council affirmed above judgment with costs.—Order of Ontario Railway and Municipal Board set aside. *Toronto & York Radial Rw. Co.* v. *City of Toronto* (1913), 25 O. W. R. 315.

Expropriation of land—*Agreement to submit compensation to "valuers"—Appeal prohibited — Motion to set aside finding — Alleged misconduct—View of property in presence of claimant only—Valuers not as circumscribed as arbitrators—No injustice done—Failure of company to give item of evidence—Examination of valuer—Dismissal of motion.*]—Boyd, C., *held*, that where certain lands were being taken and injuriously affected by a railway and the parties had agreed that the sum to be paid should be left to three valuers and that there should be no appeal from their finding, the action of the valuers in proceeding to view the lands in question, the claimant but no representative of the railway being present, was not misconduct and was no ground for setting aside their finding.—That greater latitude is to be allowed valuers than arbitrators. *Re Laidlaw and Campbellford O. & W. Rw. Co.* (1913), 25 O. W. R. 431; 5 O. W. N. 534.

Horse killed on track—*No witness of accident — Finding of fact by trial Judge—Evidence—Reversal on appeal — Ry. Act. R. S. C. 1906 c. 37, ss. 254, 294 (4), 295—9 & 10 Edw. VII. c. 50, s. 8—Absence of fencing — Liability for —"At large"—Meaning of—Onus—Satisfaction of.*]—Action against a railway company for damages on account of the alleged killing of plaintiff's horse by a train of defendants. Plaintiff had let out the horse into his pasture which ran down to the railway track, the right of way being unfenced. The accident was not witnessed by anyone.—O'Leary, Dist. Ct.J., *held*, that there was no evidence to establish the fact that the horse was killed by the train and dismissed the action with costs.—Sup. Ct. Ont. (2nd App. Div.) *held*, that the evidence clearly shewed that the death of the horse must have been caused by a passenger train of defendants.—That Statute 9 & 10 Edw. VII. c. 50, s. 8, amending the Railway Act, shifts the onus and in effect provides that the railway company to escape liability must prove that the animal was "at large" and "at large" through the owner's negligence or wilful act or omission.—That "at large" in the above section means elsewhere than on the land of its owner. — *McLeod* v. *Can. North. Rw. Co.*, 12 O. W. R. 1279, followed. —Appeal allowed with costs and judgment entered for plaintiff for $275 and costs. *Palo* v. *Canadian Northern Rw. Co.* (1913), 25 O. W. R. 165; 5 O. W. N. 176; O. L. R.