

The Railway Act of 1903 changed the law in this respect. *Bank of England v. Vagliano* (1891), A.C., per Lord Herschell at p. 144, followed as to the interpretation of a statute altering the former law.

*Arthur v. Central Ontario Ry. Co.*, 11 O.L.R. 537; *Bason v. Grand Trunk R. Co.*, 12 O.L.R. 196, and *Becker v. C.P.R. Co.*, 7 Can. Ry. Cas. 29, followed

The plaintiff had for two years been accustomed to turn his horses out of the stable in the winter to go without halters, to a watering trough about fifteen yards away and driving them back to the stable after drinking. On the occasion in question the plaintiff and his hired man were carrying out the usual routine when three of the horses after drinking, without their noticing it, walked off in the direction of the road instead of returning to the stable. When the fourth had finished drinking it started to walk after the others. The plaintiff observed this and immediately tried to intercept the horses, but the three escaped and, although the plaintiff followed them up at once and did his best to recover them, they eventually got onto the defendants' railway track and were killed by a train on a bridge.

Held, that the plaintiff was not guilty of negligence or of any wilful act or omission in the matter so as to disentitle himself to recover.

Curran, for plaintiff. Clarke, K.C., for defendants.

Robson, J.]

[November 4.

RE CANADIAN NORTHERN RAILWAY CO. AND BLACKWOOD.

*Railway company—Expropriation of land for railway—Possession before payment of compensation—Railway Act, R.S.C. 1906, c. 37, s. 217—Board of Railway Commissioners, jurisdiction of.*

An order of the Board of Railway Commissioners for Canada, giving leave to a railway company to construct an extension of a spur track, and authorizing the expropriation of the necessary land is conclusive unless reversed on appeal to the Supreme Court, as to the right of the company to expropriate the land and construct the extension.

A warrant to put the company in possession of the required land before payment of the compensation should, however, not be granted under section 217 of the Railway Act, unless there