fairly read, and considered as a whole, leads the Court to a clear conclusion that the findings of the trial Judge are erroneous, it becomes the plain duty of the Court to reverse these findings." *Beal* v. *Michigan Central Rw. Co.* (1909), 19 O. L. R. at p. 506.

In this case shortly before the passing of a train the horse had been seen "all right" on the plaintiff's side of the track. Shortly thereafter it was seen with its leg broken, but on the other side; there was blood and hair on the rail on this side and near where the horse was found, and the horse had other injuries, some on the head, some on the neck, etc. The learned Judge found against the plaintiff because of the evidence of engineer and fireman.

"The engineer and fireman on defendant's train had done everything required of them. They were not in any way at fault. The train was running slowly, the whistle had been blown. The head-light was on and that they were on the look-out so that they are not excusing themselves from a negligence, and I believe they are telling the truth as far as they know. It might be possible to have the train hit the horse without their knowing it. From the fact that their attention was called to the horse crossing the track immediately in front of their train they would naturally be on the lookout, I think if the train had struck the horse they would know it."

As the trial Judge points out, it is possible that their train struck the horse without either fireman or driver knowing it, although the fireman, at least, says it is not possible. But the error of the Judge is in the assumption that the railwaymen were speaking of this particular horse which is not the fact: it was "a horse."

I think that we are entitled to hold, and should hold, that the plaintiff has proved that his horse was injured by the defendants' train.

The defendants, however, raise before us that the claim of the plaintiff cannot succeed by reason of the provisions of sec. 294 (4) of the "Railway Act.' If effect were to be given to this contention the result would be startling. It is argued that the act of the plaintiff in putting his horse out of the stable, although on his own land, was a putting at large by his wilful act within the meaning of sec. 294 (4) of ch. 37, R. S. C. (1906). The result would be that all a railroad company need do would be to neglect their