

*Evidence—Survey—Plan—Description.*

The description of a lot prepared for and used by the Crown Lands Department in framing the patent is admissible evidence to explain the metes and bounds of that lot.

The plan of survey of record in and adopted by the Crown Lands Department governs on a question of location of a road, when the surveyor's field notes do not conflict with the plan and no road has been laid out on the ground. (Judgment of the Common Pleas Division reversed).—*Kenny v. Caldwell*, Court of Appeal, Feb. 26, 1894.

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*RAILWAY DECISIONS.*

*Railway company—Broken gate—Liability for horses killed on railway—Negligence—Owner of horses not owner of adjoining land—Horses on land without permission.*

Appeal by the defendants from the decision of Dubuc, J.

From the evidence it appeared that the plaintiff from time to time obtained permission from his father to pasture stock on the land of the latter. But that permission was only temporary, not permanent. The plaintiff stated that he had had stock at his father's the previous winters by arrangement, showing that any permission was temporary and just renewed from time to time. There was no evidence to warrant the finding of the jury that the animals were on the land of Matthew Ferris by his permission. Unless they were so, the plaintiff could not recover against the defendants.

*Held*, it was not enough for the plaintiff, to entitle him to claim the benefit of s.s. 3 of s. 194 of the Railway Act, 51 Vic., c. 99, as amended by 53 Vic., c. 28, s. 2, to show merely, that the owner of the adjoining land from which his animals got upon the track would not have objected to their being on his land, and would not have treated them as trespassing, had he known they were there. He must go further than this. He must adduce evidence from which it can be reasonably found or inferred that the animals were on the adjoining land with the prior leave and consent of the owner, and under such circumstances that the owner could not say they were there unlawfully and trespassing. As there was not any evidence upon which a jury as reasonable men might find a verdict for the plaintiff, a non suit should be entered.—*Ferris v. Canadian Pacific Railway Co.*, Queen's Bench, Manitoba, March 10, 1894.