

STREET, J.

MAY 30TH, 1903.

TRIAL.

## PALMER v. MICHIGAN CENTRAL R. W. CO.

*Railway—Farm Crossing—Non-repair of Approach within Farm —  
Injury to Tenant of Farm—Duty of Railway Company as to  
Repair.*

The plaintiff was tenant of the west half of lot 10 in the 9th concession of Yarmouth, through which the defendants' railway passed, and defendants had constructed an overhead farm crossing across their railway for the use of persons occupying the farm. The approach to the crossing extended beyond the boundary fence of the railway land into the farm occupied by plaintiff. At the time the approach was made the defendants offered to build it of earth with a grade of one foot in 20, but, at the request of the owner, it was built with a grade of one foot in 7, with a covering of gravel. On 26th August, 1902, plaintiff, while descending the portion of the approach within his own fence with a load of oats, was upset and injured. The approach to the crossing within the farm fences was out of repair, having been worn so that it sloped away to one side, and the accident to plaintiff was caused by the want of repair. No request had been made by plaintiff or any other person to defendants to repair the approach, nor had any notice been given them that it was out of repair.

J. A. Robinson, St. Thomas, for plaintiff.

I. F. Hellmuth, K.C., and E. C. Cattanach, for defendants.

STREET, J.—The liability of defendants is founded upon sec. 19 of the Railway Act, 51 Vict. ch. 29 (D.), which provides that "every company shall make crossings for persons across whose lands the railway is carried convenient and proper for the crossing of the railway by farmers' implements, carts, and other vehicles." There seems to be no other clause in the Railway Act which imposes upon railway companies any further duties or responsibilities in relation to farm crossings.

The company are authorized by the Act, for the purpose of their undertaking, to divide a farm in two by running their line through it; they are obliged to compensate the owner for the damage done, and further to make a convenient crossing for him over their line of railway. They are obliged, in other words, to give him the easement of a