

Full Court.]

McKELLAR v. C.P.R. Co.

[Mar. 5.]

Railway—Obligation to fence—Liability for death of animal not actually struck by train or engine.

Verdict for plaintiff in a County Court for damages for the loss of a horse under the following circumstances: The horse got on the railway track through a defect in defendants' fence where the right of way passed through plaintiff's land, when a train came along and alarmed the horse which fled along the track for some distance and then rushed to the north side and tried to break through the fence. A strand of barbed wire from the fence became entangled round the horse's neck and cut it so badly that the horse was dead when found shortly afterwards. Sub-s. 3 of s. 194 of the Railway Act, as re-enacted by 53 Vict., c. 28, provides that, under such circumstances, "the company shall be liable to the owner of the animal for all damages in respect of it caused by any of the company's trains or engines."

Held, on appeal to this Court, that the death of the animal could not be said to have been "caused by" the train within the meaning of that enactment, but was caused by its coming into contact with the barbed wire, and that the liability of the railway company is limited to cases where the animal is actually struck or run over by a train or engine. Dicta of the judges in *Young v. Erie and Huron Ry. Co.*, 27 O.R. 530, and *James v. G.T.R. Co.*, 1 O.L.R. 17, 31 S.C.R. 420, and decision in *Winspear v. Accident Insurance Co.*, 6 Q.B.D. 42, followed.

Appeal allowed and nonsuit ordered.

Hoskin, for plaintiff. *Aikins*, K.C., and *Thompson*, for defendants.

Full Court.]

BERGMAN v. BOND.

[Mar. 5.]

Medical profession—Electro-therapeutics, a branch of medicine, but massage not.

Verdict in a County Court for \$250 for his services as an electro-therapeutist and massagist. Sec. 62 of the Medical Act, R.S.M. 1902, declares that it shall not be lawful for any person not registered under the Act to practice medicine, surgery or midwifery for hire, gain or hope of reward, and s. 63 of the same Act provides that no person shall be entitled to recover any charge in any court of law for any medical or surgical advice or for attendance, or for the performance of any operation, or for any medicine he may prescribe or supply, unless he be registered under the Act. The plaintiff was not registered under the Act.

Held, on appeal to this Court, that electro-therapeutics is a branch of medicine, and a person who administers treatment of a patient by means of electricity thereby practises "medicine" within the meaning of the Act and cannot recover any charges therefor without being registered under the Act. Practising massage by itself is not practising medicine within the meaning of the Act. Appeal allowed with costs.

A. C. Ferguson, for plaintiff. *H. A. Robson*, for defendant.