was intersected by the railway "on the level," then along the allowance for road to the point of intersection, and thence along the railway to the place where they were struck by a passing train. The only negligence charged was that the defendants had not constructed and maintained cattle-guards or fences. It was not alleged that the horses were in charge of any person.

Held, upon demurrer, that the horses being, contrary to the provision of s. 271 of the Railway Act of Canada, 51 Vict., c. 29, within half a mile of the intersection, and not in charge of any person, they did not get upon the railway from an adjoining place where, under the circumstances, they might properly be, within the meaning of 53 Vict., c. 28, s. 2, and therefore the defendants were not liable.

Watson, Q.C., for the plaintiffs.

H. S. Osler for the defendants.

Chancery Division.

Full Court.] [Jan. 16.

WEEKS *v.* FRAWLEY.

Receiver—Policy of life insurance—Order to sell—Equitable execution—Insurance for benefit of wife and children.

The plaintiff recovered judgment against the defendant for the sum of $300 and costs. An order was made appointing a receiver, and for the sale by him of a certain policy of insurance on the life of the defendant for $1000, upon which twenty out of thirty annual premiums had been paid, ten remaining to be paid if the defendant should so long live, after which there would be no more premiums payable. After the date of the order appointing a receiver, the defendant made an assignment or declaration under the Act to secure to wives and children the benefit of life insurance, purporting to secure the proceeds of the policy for the benefit of his wife and children.

Per BOYD, C.: No order to sell the policy should have been made against the will of the persons entitled under the assignment of the policy. They should have the opportunity of making payment under the semi-annual premiums so as to keep the policy on foot, and, if they did so, the policy should remain in the hands of the receiver till it could be realized upon the death of the insurer. If they fail to keep up the payments, it might then be proper (as the receiver had no funds wherewith to pay them) to negotiate with the company for the surrender of the policy, and the order should be modified accordingly. It was not necessary to consider the question of the rights of the wife and children, the matter having been argued on the footing that the act of the defendant in assigning the policy was subject to the charge created by the receiving order.

Per MEREDITH, J.: Whether there was power to make the order authorizing the sale of the policy or not, the case was not a proper one for the exercise of it, the plaintiff not having shown that the granting of it was necessary, having regard not only to his interests, but to the rights and interests of all parties and persons of a substantial character in the subject-matter. The order in question should therefore be set aside.