

was pronounced on December 1st, 1903, and is not yet reported. (See note of this case post p. 74.)

In this case the decision depended on the construction to be placed on s. 8 of 55 & 56 Vict., c. 27, which provides that in passing through a thickly peopled portion of a city, town or village, a railway train should not proceed at a greater rate of speed than six miles an hour unless the track was fenced in the manner prescribed by the Act. In s. 259 of the Railway Act of 1888 it was "unless the track is properly fenced." By another section of the latter Act the Railway Committee was given power to regulate the rate of speed in a city, town or village, but that it should not in any case exceed six miles an hour, "unless the track is properly fenced."

The only provision as to fencing, except that as to fences on both sides of the road, is contained in 55 & 56 Vict., c. 27, s. 6, which is substituted for and repeals s. 197 of the Railway Act, 1888, and is as follows: "At every public crossing at rail level of the railway the fence on both sides of the crossing and on both sides of the track shall be turned in to the cattle-guards so as to allow of the safe passage of trains." This section is plainly intended to keep cattle off railway tracks and not at all to protect persons using the highway, which is left entirely open, from danger by passing trains.

In the case of *G.T.R. Co. v. McKay* the train was approaching a crossing on Main Street, a thickly peopled portion of the town of Forest, at the rate of at least twenty miles an hour, and McKay attempting to drive across the track it struck the carriage and threw him and his wife out, the latter being killed and himself injured. In an action against the Railway Co., the jury found that it was negligent in going at too great speed and not having gates at the crossing. The Court of Appeal affirmed a verdict for the plaintiff but its judgment was reversed by the Supreme Court which held that the company had complied with all the requirements of 55 & 56 Vict., c. 27, s. 6, as to fencing, and was not, therefore, obliged to reduce the speed of its train to the maximum rate prescribed by s. 8, and owed no further duty to the public.

A perusal of the written opinions of the judges in this case will show that it not only overrules the *Fleming case* but goes much further than *N.B.R. Co. v. Vanwart* in upholding the statute as