

The facts were that the plaintiff was lessee of certain premises on which was a quantity of slag and cinders which had become part of the soil, and he had also obtained a license from the owners of adjoining premises to enter and remove slag and cinders therefrom which had also become part of the soil. The slag and cinders to which he claimed to be entitled he contracted to sell to the defendants at so much per ton, but the plaintiff also included in the agreement the slag and cinders on other premises adjoining to which he had no title. After a considerable quantity of slag and cinders had been removed, the owners of the land and premises to which the plaintiff had no title intervened and prevented the defendants from removing any more slag or cinders therefrom, and for the breach thus occasioned, the defendants claimed damages, but the Divisional Court (Lord Alverstone, C.J., and Walton, J.), were of the opinion that the principle of *Floreaux v. Thornhill* (1777) 2 W. Bl. 1078, and *Bain v. Fothergill* (1874) L.R. 7 H.L. 158, applied, and as the vendor's failure to perform the contract was due solely to defect in his title, the purchasers could not recover any damages for loss of his bargain. Their lordships were also of opinion that the agreement was not a contract for the sale of goods so as to entitle the purchaser to recover as damages the difference between the contract and market price of the slag, etc.

RAILWAY—LEVEL CROSSING—ROAD RAISED ON EITHER SIDE OF RAILWAY—REPAIR OF ROADWAY.

*Hertfordshire v. Great Eastern Ry.* (1909) 1 K.B. 368. The defendant company under its statutory powers had constructed its railway across a public highway, the track was laid at a higher level than the highway and in order to bring the roadway up to the level of the railway inclined planes on either side of the railway were also made by the railway under its statutory powers. The question in this action was whether or not the railway were bound to keep these two inclined planes in repair. Jelf, J., who tried the action, came to the conclusion that the defendants having been empowered by statute to interfere with the roadway, thereby incurred a common law liability to keep in repair the whole of the roadway dealt with by them, and were therefore liable to keep the whole of the inclined planes including the parts thereof lying outside the line of the railway fences, in repair.