

tiff's horses having, in consequence, got on the track and been killed, the defendants were liable, apart altogether from any question of negligence.

H. Cameron, Q. C., and W. R. White, contra. Plaintiffs being only trespassers, never having been located or obtained a license of occupation from the Crown, were not the legal occupants, as contemplated by the statute, and cannot compel the company to fence, and hence cannot recover. Before the amendment made by the section referred to, defendants would not be liable to the plaintiffs: see *Kümer v. Great Western R. W. Co.*, 35 U.C.R. 595; *Wilson v. Northern R. W. Co.*, 28 U. C. R. 276; *Douglas v. Grand Trunk R. W. Co.*, 5 A. R. 585. The legislature could never have intended to compel the railway to fence against mere trespassers, for this would apply to any person living on any land whether belonging to the Crown or not. There would be no limit to the liability in such case. An occupant is a person who holds the title, or has the permission of the Crown to occupy it: see Wharton's Lexicon as to the meaning of occupancy.

February 9, 1885. WILSON, C. J. — The perusal of the evidence satisfies me that until November, 1883, the plaintiff had no right of occupation of any part of lot No. 29, but of the house which she rented from Mr. Worthington, and that she claimed nothing more at that time than as tenant to Worthington. She may have used part of the small cleared parts about the house and railway ground, but not as of right, and, as she said, she would have continued to pay rent after November, 1883, till she owned the land, if she had been asked for it; but she was not asked for it; because the work had gone further east than lot 29, and the men were not boarded upon that lot after that time. They were then boarded on lot 27.

The plaintiff, before the horses were killed, had been located for lot 26. She continued to live on the east half of 29 till after the horses were killed, that is, till about the last of June, 1884, and then she moved to lot 27, still keeping possession of the east half of 29, by having some of her goods and crops upon that lot.

In May, 1884, she wrote to the Crown

Land agent applying for the east half of 29. On the 9th of September, 1884, she made an affidavit, in which Dranley and Halliday joined, that she was head of the family, and had no son, but seven daughters, and that the land she applied to be located for was wholly unoccupied and unimproved.

That affidavit was not correct in several particulars.

1. She was not properly head of the family, for her husband was living.

2. She had a son.

3. The land was not wholly unoccupied, for there were several of the company's men still occupying shanties upon the lot; and at that time she had been located for No. 26, and lived upon No. 27.

It appears she never paid taxes upon the east half of 29 until the 27th of September, 1884, according to the receipt, although the receipt was not given till the 6th of October.

Mr. Gorman, the plaintiff's solicitor, wrote to the plaintiff, and Mr. Dranley received it for her about the end of September, in which he stated that neither the plaintiff nor Dranley could recover against the company for their horses which had been killed, unless it could be proved that they had some title to the lot; and the plaintiff said the letter stated by payment of taxes or something of that kind.

Then it appears that Halliday, the collector, claimed from Quirt \$15, being the sum said to be payable for the whole lot No. 29, who refused to pay that sum; but he paid about two months before the trial, in October, \$11.08, and, as well as I can make out, after the letter came from Mr. Gorman about proving title in Mrs. Conway by the payment of taxes, or something of that kind, Halliday told Quirt to the effect he would let his share of the taxes stand at the \$11.08, and he would get the rest of the \$15 from the plaintiff, and she then paid him \$3.90, making in all \$14.98 for the taxes for 1884.

It is also quite clear that after the receipt of Mr. Gorman's letter, Quirt was sent for on the 6th of October, about nine days before the trial, by the plaintiff, and by those assisting and advising her in this action, to appear before Mr. Shannon, the magistrate; and Quirt went to the place appointed, the plain-