

From MacMahon, J.]

McINTYRE v. THOMPSON.

[Jan. 7.]

*Limitation of Actions—Possession*

The acts relied on in support of a claim to title by possession were that the claimant had sold the timber off the land in question; had afterwards cleared it, and had sowed and harvested one crop of wheat; had then for some years taken hay from it; and had then used it as pasture land. The land was not wholly enclosed, one end being bounded by a marsh, and through this marsh cattle could and did stray into it.

*Held*, that there had not been such possession as is necessary to bar the right of the true owner.

Judgment of MACMAHON, J., affirmed.

Poussette, Q.C., for appellant. D. W. Dumble, for respondent.

From Drainage Referee.]

[Jan. 7.]

PRIEST v. TOWNSHIP OF FLOS.

*Drainage—Alteration of report and plans.*

Before the report, plans, and assessment of the engineer for a drainage scheme have been adopted by the council, it can refer them back to him for further consideration or for amendment, but after they have been adopted it cannot of its own motion change or amend them, and if the drainage scheme is carried out with a material change the municipality are not protected, and are liable to make good any damages resulting from the work.

Judgment of the Drainage Referee affirmed.

Matthew Wilson, Q.C., and W. F. Lent, for appellants. C. E. Hewson, for respondents.

From Street, J.]

[Jan. 7.]

JAMES v. GRAND TRUNK RAILWAY COMPANY.

*Railways—Fences—Culvert—Animals on track—Negligence.*

The plaintiff's horses, which were in a field on one side of the defendants' line of railway, passed to a field on the other side through an unfenced culvert over which the line ran, and, the fence in that field being broken, wandered to the highway, and then at a crossing went on the line of railway and were killed:—

*Held*, that the defendants were bound to fence the culvert, and that not having done so they could not set up that the horses were not lawfully on the highway, or defeat the plaintiff's claim to damages.

Judgment of STREET, J., 31 O.R. 672; 36 C.L.J. 384, affirmed.

H. S. Osler, for appellant. Teetzel, Q.C., and Geo. C. Thomson, for respondent.