

tenant on the one hand, and tenant and assignee on the other. The Victoria Harbour Lumber Co. can have no rights higher than those of Picard, and the licensees of the Victoria Lumber Co. can have no higher rights than that company.

Upon that ground the action should be dismissed.

I think also the plaintiffs must fail upon another ground. The statute, sec. 237 (4), exempts the company from liability if the company, in the opinion of the Court or jury trying the case, establishes that an animal got at large through the negligence of the owner or his agent. These horses were a lot bought in Toronto, brought out to Wahnapiatae with halters on, and allowed to rush out pell-mell into the stockyard, instead of being led out by the halter and tied up to be taken away. Plaintiffs' witness Beck said this was not the right way to take them out of the car. . . . This alone would not conclude plaintiffs. The horses, strange as they were to each other, were most of them allowed to run, 5 or 6 being led by the halter, and the remainder following as they liked. This method of taking the horses was adopted because, while plaintiffs' servants really wanted to keep them back, they did not think there was much danger, and they did not take very much trouble to keep them back.

"Sitting as a jury, I was allowed by consent of counsel "to use my knowledge of horses acquired on the farm and in my experience." Sitting as a jury and using my knowledge, I say that, beyond question, the method adopted with these strange horses was a negligent one, and that this negligence was the cause of the animals getting and being at large. Without any such knowledge or experience, and using common knowledge, I think that conclusion would equally be arrived at, and the last sentence of sub-sec. 4 does not avoid the consequences of this finding—that only provides that the mere fact of the animals not being in charge of some competent person shall not deprive the owner of his right to recover—in other words, the fact of the animals not being in charge of some competent person shall not ipso facto be deemed negligence.

In any view, plaintiffs cannot succeed. The action will be dismissed with costs.