29, and they improved a little on the north side, and about an acre on the south side near the railway track, and that they cultivated what they could in 1883, she expecting then it was to be the defendants' land; that they went in there first as tenants of James Worthington, the manager of the construction work for the defendants; that the first three months they paid $4.00 a month, and after that $6 a month rent; that they paid him rent up to September, 1883, and two months later rent was paid to Salisbury, the pay master of the defendants; that they had since paid no rent to anybody, the rent being deducted by the defendants from her board bill for boarding the men; that she afterwards heard from the assessor that Mr. Worthington gave up his claim to the land, and that she paid taxes on it, and she applied in May, 1884, to the Crown land agent in Mattawa for it; that a part of the house occupied by her was not built by the company, and that she paid the man $8 for that part, which she used as a kitchen; that she continued in that house, which was on the concession road, till the last of June, 1884, and until after the horses were killed; that she then went into the house upon lot 27, where the station was built, and bought an acre of it; that she was not located for it, but for lot 26; that she made the affidavit of 9th September, 1884, for the purpose of applying for the east half of lot 29; that it was a mistake in the affidavit that she was located for lot 27; it should have been for lot 26; that she was living on an acre she had of lot 27; that she was located for 26 in the spring of 1884, and applied for it before her horses were killed.

At the close of the evidence the learned Chief Justice found that the plaintiff entered into possession of a small portion of lot No. 29 in the statement of the plaintiff's claim mentioned, not exceeding two acres, under one James Worthington, who was a contractor for building the railway; that the land in question was part of the ungranted land of the Crown; that the greater part of the land in the neighborhood was in a state of nature; that the plaintiff paid rent to Worthington for the house up to November, 1883, and since that time the plaintiff had made application to the Crown Lands Department to be allowed to purchase the lot, and that the Department had not as yet given any intimation to her as to whether she would be allowed to buy or not.

He also found that one Rangier was in possession of a small part of the lot, that George Quirt was in possession of part of the said lot, and claimed the right to become the purchaser of the same: and that since this action commenced, he and the plaintiff Catherine Conway had agreed to hold, she the east half and Quirt the west half of the lot; that the defendants were not guilty of any negligence, other than the omission to fence their railway over the said lot of land. He found the value of the horses killed by the defendant's train to be $300, for which amount they were entitled to recover, if under the circumstances, the plaintiffs, or either of them were or was such occupants of the land that the defendants were bound to fence their railway across lot No. 29, in the pleadings mentioned; and he found that the plaintiffs were not such occupants; and that the defendants were not bound to fence their railway across the said lot; and he dismissed the plaintiff's action, with costs.

The shorthand reporter at the trial noted that his lordship said at the time of giving judgment that he was by no means free from doubt that he put a proper construction on the clause: that the first part of the section 46 Vic., ch. 24, sec. 9, required the railway company to fence where any part of the land was occupied, no matter how small a part, while the latter part of sub-section 2 only gave the right of occupation to the land in respect of which the fencing must be done; and the occupant of an acre was not the occupant of a whole lot, but only of a part of it; and that he thought it better to decide as he did, so that the matter might be settled by a review of his judgment.

November 29, 1884. *Osler, Q.C.*, and *M. J. Gorman*, moved to set aside the judgment, and enter it for the plaintiff, contending that the plaintiffs, being occupants of lot 29 in the 14th concession of Ferris, crossed by the defendants' railway, the defendants were bound by sec. 9, sub-sections 1, 2, 3, of 46 Vic. chap. 24, to fence where their line crossed this lot; and that, having neglected to do this, and the plain-