

peared on the face of the statement of claim, and the defendants had taken no steps to have it amended, but filed a statement of defence.

*Held*, without deciding whether Rule 218 of "The King's Bench Act" justified the joining of the plaintiffs in this case, that defendants, if they thought it did not, should have moved to strike out all but one of the claims before filing a statement of defence, and had lost the right to take such objection afterwards.

*Hoskin*, for plaintiffs. *Aikins*, K.C., and *Coyne*, for defendants.

Richards, J.]

[April 16.

CARRUTHERS v. CANADIAN PACIFIC RY. CO.

*Railways—Obligation to fence—Railway Act, 1903 (D.), c. 58, s. 237(4)—Animals at large.*

The plaintiff's claim was for damages for the killing, by one of defendants' trains, of his four horses which got on to the right of way through an opening in the fence dividing the right of way from a neighbour's field. Plaintiff kept his horses in a fenced field, the entrance to which was secured by bars, but, some person having without the knowledge or permission of the plaintiff let down the bars, the horses strayed through the opening to a highway, thence through another opening into the field from which they got on to the right of way. The killing of the horses did not occur at any point of intersection of the railway with a highway. The opening in the defendants' fence through which the horses got on to the right of way had been left unprovided with a gate by defendants' negligence for about two years.

*Held*, that the proved facts brought the case within sub-s. 4 of s. 237 of the Railway Act, 1903 (D.), that there was nothing to shew that the animals got at large through the negligence or wilful act or omission of the owner or his agent or of the custodian of such animal or his agent, and therefore the plaintiff was entitled to recover the amount of his loss from the defendant company.

Under said sub-s. 4, it is immaterial so far as the company's liability is concerned, whether the animals killed or injured were or were not lawfully on the land from which they got on to the right of way.

*Quære*, whether sub-s. 4 would not apply even if the animals