

Dominion, have, owing to the different wording of the statutes on which they depend, to be regarded with caution, and are not in fact a guide in this case. The obligation, if any, is to be found in the statutes of the province of Ontario.

The Act of incorporation of defendants is the 2 Edw. VII. ch. 96. By sec. 20 thereof the several clauses of the Electric Railways Act and its amendments are incorporated with the special Act. The Electric Railways Act, R. S. O. 1897 ch. 209, sec. 42 (1), . . . sub-secs. 1, 2, and 3, . . . are the same provisions as are contained in the Ontario Railway Act, 1906, sec. 87, sub-secs. 1, 2, and 3. And by 6 Edw. VII. ch. 121, sec. 4, the Ontario Railway Act is to govern wherever the provisions of the special Act and the Railway Act relate to the same subject matter.

It is quite clear that the portion of the railway in question is not "passing along" a public highway. "Along" here means "on" and not "alongside of," or "by the side of:" see several cases decided in different States of the Union and collected in Am. & Eng. Encyc. of Law, 2nd ed., vol. 2, p. 175. The section would be quite insensible if the word had any other meaning.

Even if full and literal effect be not given to the very broad words of sub-sec. (3) in both statutes, it has been found upon competent evidence that the accident was caused by the want of a fence, and defendants are liable, unless they can be exonerated by sec. 87, sub-sec. 6, which does not apply here: or by sec. 238. . . . This section applies where the animals are permitted to be at large within half a mile of the intersection of a highway with a railway, and we are relieved from considering whether the horse was permitted to be at large, by the fact that there is no evidence that it was within half a mile of a railway.

Of course no agreement by land owners with the railway company can have any effect in taking away the plaintiff's rights.

The appeal must be dismissed with costs.

TEETZEL, J., concurred.

MAGEE, J., dissented, for reasons to be stated in writing.