Matthew, and that the provision of paragraph 9 was in effect an attempt to interfere with the incidents of such a gift, and repugnant to the gift and void.

M. C. Cameron, for an infant.

MEREDITH, C.J., said that the question was, who are the persons entitled to share in the residue? And if, upon the true construction of the will, in the event that had happened, Matthew Virtue was not one of them, there was no room for the application of the general law that a defeasance, either by condition or by conditional limitation or executory devise, cannot be well limited to take effect in derogation not merely of the right of alienation, but of any of the natural incidents of the estate which it is intended to divest.

The case was not distinguishable in principle from Bain v. Mearns, 25 Gr. 450.

If the provisions of paragraph 9 were to be considered repugnant to those of paragraph 8, the case was one for the application of the rule cum duo inter se pugnantia ultimum satum est; but there was no such repugnancy nor any reason for setting up artificial barriers against the carrying out of the plainly expressed intention of the testator.

Declaration that, in the event that had happened, Matthew Virtue was not entitled to take anything under the provisions of the paragraph of the will referred to.

Costs of all parties out of the residue—those of the executors between solicitor and client.

DIVISIONAL COURT. SEPTEMBER 22ND, 1909

KELLY v. GRAND TRUNK R. W. CO.

Railway—Farm Crossing—Overhead Bridge—Destruction by Company without Authority from Board of Railway Commissioners—Neglect to Provide Crossing for Short Period—Construction of Level Crossing—Order of Board for Construction of Overhead Bridge—Damages for Delay—Injury to Land Owner—Inconvenience—Injury Caused by Construction of New Bridge—Remedy—Statute of Limitations—Railway Act, sec. 306.

Appeal by the defendants from the judgment of CLUTE, J., 13 O. W. R. 781, in favour of the plaintiff in an action for damages for injury to his farm, caused by the defendants' railway being built through it, and for delay in furnishing proper means of communica-