

SELECTIONS.

and customary way, as it had a clear and lawful right to do. The defendant had the unqualified right to use its property in any way and manner it was pleased to do, up to the point of doing an intentional injury to the property of another. There was no obstacle to prevent the horses escaping from the tracks to a place of safety any moment, and at any time after they were discovered by the engineer up to the instant they were struck and killed on the bridge. The usual and ordinary means adopted to drive cattle from the tracks is the noise of the train and the sounding of the whistle or bell, and such signals are generally sufficient for that purpose without checking the speed of the train. *Bemis v. Conn. R. Co.*, 42 Vt. 381; S. C., 1 Am. Rep. 339. We are not aware of any rule of law that requires a railroad company to do more with a view of avoiding injury to cattle trespassing upon its tracks. It is impossible to conjecture why the engineer should have purposely and maliciously done this injury to the plaintiff's property. The evidence was not sufficient to sustain the conclusion reached by the jury that the engineer acted wantonly and maliciously, and the question should not have been submitted to their consideration. The most that can be said in criticising his action is that his conduct was heedless and morally wrong. *Nicholson v. Erie R. Co.*, 41 N. Y. 525. The precise question has been passed upon in the courts of other States, and the same conclusions were reached on a state of facts similar to those before us. *Maynard v. Boston and Maine R. Co.*, 115 Mass. 458; S. C., 15 Am. Rep. 119; *Darling v. Boston and Albany R. Co.*, 121 Mass. 118. The jury should have been instructed to render a verdict for the defendant. *McCunness v. C. and N.-W. R. Co.*, 45 Wis. 365; *Price v. New Jersey, R. & T. R. Co.*, 31 N. J. L. 230; *Indianapolis P. & C. R. Co. v. Candle*, 60 Ind. 112." *Chic. & Alton R. Co. v. Kellam*, 92 Ill. 245; S. C., 34 Am. Rep. 128, seems to the contrary. See also *Cincinnati, etc., R. Co. v. Smith*, 22 Ohio St. 227; S. C., 10 Am. Rep. 729, and note, 732.

In *Matter of Gould & Co., West. Pub. Co., and Lawyers' Co-Op. Pub. Co.*, the Supreme Court of Connecticut have held that the State having a contract with a

publishing house for the publication of volumes 49 to 54 of the reports of its Supreme Court of Errors, and provided that a copyright of each volume should be taken out in the name of the secretary of the State, for the benefit of the State, the official reporter will not be compelled, by order of the court, to deliver to any applicant who offers to pay the legal fees copies of the judicial decisions of the court, when the same are desired for publication before the publication thereof in the official reports, or the advance sheets thereof. The court said: "For the information of the public the State of Connecticut publishes reports of cases argued and determined in the Supreme Court of Errors. The volume is prepared for publication by the official reporter, and contains the opinions written by the judges, together with head-notes to all cases, foot-notes to some of them, statements of facts, a table of cases, and an index to subjects, the work of the reporter. The judges and the reporter are paid by the State, and the product of their mental labour is the property of the State, and the State, as it might lawfully do, has taken to itself the copyright. The statute requires the comptroller to supervise the publication of the volumes, taking a copyright for the benefit of the State. Under this, that officer for a valuable consideration granted to Banks & Bros., who agree to print and sell the reports at a fixed price, the protection of the copyright for a limited period. During three or four years the State, with knowledge, has acquiesced in the terms of this contract, and accepted the resulting benefits. If therefore we should now direct the reporter to furnish copies of opinions to the petitioners, that they may sell them to the public in advance for their own profit, we should in effect advise the State to a breach of contract. It is for the State to say when and in what manner it will publish these volumes, and the taking of the copyright in no sense offends the rule that judicial proceedings shall be public. The courts and their records are open to all. The reasons given by the Supreme Court of Errors for its determination in a given cause constitute no part of the record therein. The judgment stands independently of these. Moreover, these are accessible to all who desire to use them in the enforcement of their rights."—*Albany Law Journal*.