

Syndicate Ltd., 45 W.R. 10, *Re Railway Time Tables Publishing Co.*, 42 Ch. D. 98, and *Re Cornwall Furniture Co.*, 20 O.L.R. 520, specially referred to.

G. F. Shepley, K.C., for liquidator. W. M. Douglas, K.C., for respondents.

Meredith, C.J.O., Maclaren,
Magee and Hodgins, J.J.A.]

[14 D.L.R. 279.

BELL v. GRAND TRUNK R. CO.

Railways—Accidents at crossings—Liability for—Previous accident—Excessive speed—Signals.

Held, 1. By reason of the provisions contained in s. 275 of the Railway Act, R.S.C. 1906, c. 37, as to the making of reports and inspection of accident occurring at railway crossings, that part of the section added by 8-9 Edw. VII. (Can.) c. 32, prohibiting a speed of more than 10 miles an hour by trains at certain crossings not protected to the satisfaction of the railway commission where accidents resulting in bodily injury or death had previously occurred, must be held to be limited in the latter respect to accidents of which the railway company is fixed with notice by reason of physical impact occasioning the same or by reason of the train employees actually becoming aware of the accident so as to report it; a previous accident by a horse taking fright at a passing train after passing over the crossing will not bring the sub-s. (4) into operation where it was not observed by the railway employees so as to call upon them to make a report.

2. An instruction to the jury, in an action for injuries sustained by a collision at a highway crossing, that it was negligence to run a train through a thickly settled portion of a town or village at more than ten miles an hour, is erroneous, unless qualified by stating in effect the exceptions contained in s. 275 of the Railway Act, R.S.C. 1906, c. 36, permitting a greater rate of speed where the crossing is protected in accordance with an order of the Railway Commissioner or other competent authority.

Grand Trunk R. Co. v. McKay, 34 Can. S.C.R. 81, 3 Can. Ry. Cas. 52, followed.

3. In an action for injuries sustained at a highway crossing by being struck by a train an instruction to the jury that the