

large" in sec. 294 refers to animals elsewhere than upon the land of their owner. This, I think, is apparent from a reading of the statute, and authority is not wanting. . . .

[Reference to *McLeod v. Canadian Northern R.W. Co.* (1908), 9 Can. Ry. Cas. 39, 12 O.W.R. 1279, 1283; *Higgins v. Canadian Pacific R.W. Co.* (1908), 9 Can. Ry. Cas. 34, 18 O.L.R. 12.]

The cases previous to these are cited by the Chancellor in the *McLeod* case, and it is unnecessary to refer further to them.

The learned District Court Judge has found against negligence on the part of the plaintiff, and rightly so on the facts—even if negligence by the plaintiff could avail in an action based upon neglect by the railway company of a statutory duty; as to which see *Davis v. Canadian Pacific R.W. Co.* (1886), 12 A.R. 724.

The appeal should be allowed. The trial Judge did not find the value, as he might have done, and, no doubt, would have done, had the evidence been conflicting. The only evidence of value is that of the plaintiff and his witness Isaac Karila, who both place the value at \$300.

Judgment should, in my view, be entered for the plaintiff for \$300, with costs here and below; but, as my learned brethren think the amount should be \$275, I do not dissent.

*Appeal allowed.*

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OCTOBER 27TH, 1913.

#### BATES v. LITTLE.

*Contract—Sale of Goods—Misrepresentations—Agreement to Assign Lease—Breach—Waiver—Bill of Exchange—Action on—Defence.*

Appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Kent dismissing the action, which was brought to recover \$450, the amount of a bill of exchange or cheque drawn by the defendant, and interest, and directing the return to the defendant of the instrument in question and two others.

The appeal was heard by MULOCK, C.J.Ex., RIDDELL, SUTHERLAND, and LEITCH, JJ.

J. G. Kerr, for the plaintiff.

O. L. Lewis, K.C., and S. B. Arnold, for the defendant.