

It was said in answer that the pleader has exactly followed the language of the Dominion Railway Act, 3 Edw. VII. ch. 58, sec. 237 (cl. 4).

The law is now that if animals at large get on the property of a railway company, and are killed or injured by a train (unless where the highway crosses the track), the railway company are liable *prima facie*.

All, therefore, that a plaintiff need allege and prove is that his animal was killed by a train at some part of the track which was the property of the railway company. To escape liability defendants must bring themselves within the subsequent words of cl. 4 of sec. 237. This section was considered in the case of *Arthur v. Central Ontario R. W. Co.*, ante 527.

In that case the judgment of the County Court Judge was affirmed by a Divisional Court, and I am informed by Mr. W. E. Middleton, who was counsel for defendants in that appeal, that the Court entirely agreed with the construction placed on the statute by the judgment below.

It therefore follows that the statement of claim is sufficient for a recovery by plaintiff unless displaced by the defence at the trial.

The motion will, therefore, be dismissed, with costs to plaintiff in any event, and the statement of defence should be at once delivered so that the trial may be had at Welland on 7th May.

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APRIL 25TH, 1906.

DIVISIONAL COURT.

RE McDERMOTT v. GRAND TRUNK R. W. CO.

*Division Courts—Trial of Plaintiff by Jury—Motion for Non-suit — Reservation till after Verdict — Jurisdiction of Judge—Indorsement of Verdict and Costs on Record—Inadvertence — Judgment — Execution — Stay — Prohibition.*

Appeal by plaintiff from order of MABEE, J., ante 602, dismissing motion for prohibition.

C. W. Plaxton, Barrie, for plaintiff.

W. A. Boys, Barrie, for defendants.

THE COURT (MULOCK, C.J., MAGEE, J., CLUTE, J.), dismissed the appeal without costs.