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JUNE 26TH, 1907.

DIVISIONAL COURT.

GUNNING v. SOUTH WESTERN TRACTION CO.

Railway—Electric Railway—Animal Killed on Track—Electric Railways Act—Ontario Railway Act—Duty to Fence—Passing “along” a Public Highway—Negligence.

Appeal by defendants from judgment of County Court of Elgin in favour of plaintiffs, upon the findings of a jury, for the recovery of \$175 for a horse killed by an electric car of defendants upon their line in the township of Southwold, owing to the alleged negligence of defendants in omitting to fence their line.

The appeal was heard by FALCONBRIDGE, C.J., TEETZEL, J., MAGEE, J.

T. H. Luscombe, London, for defendants.

W. K. Cameron, St. Thomas, for plaintiff.

FALCONBRIDGE, C.J.:—The whole case turns on whether there is any obligation on defendants to fence their track at the place in question. It is well settled that the liability of a railway company to fence arises by statute only; there is no common law liability to fence, either as respects the highway or as respects the adjoining properties; see the cases cited in *Westbourne Cattle Co. v. Manitoba and North-Western R. W. Co.*, 6 Man. L. R. 553.

The English railway cases, and those which have been determined on the construction of the Railway Acts of the