

and chattels he had seized until the 5th May, and as he therefore had to continue to hold and protect them until the order was made for their delivery over to the liquidator, I think the sheriff is entitled to his fees and to possession money up to the date of such order. Costs of all parties to be added to their claims.

OCTOBER 12TH, 1906.

DIVISIONAL COURT.

LEBU v. GRAND TRUNK R. W. CO.

Railway—Animal Killed on Track—Escape to Highway from Enclosure—Open Gate from Highway to Track—Negligence—Liability.

Appeal by plaintiff from judgment of County Court of Kent.

Plaintiff, a livery stable keeper at Bothwell, owned a field adjoining defendants' railway, in which he had a horse at pasture. The animal escaped from the field and got upon the highway, went a short distance, and passed through a gateway into defendants' freight yards, and on to the track, where it was killed by a train. Plaintiff claimed \$150 damages. The action was tried by the Judge of the County Court without a jury, and dismissed with costs.

O. L. Lewis, Chatham, for plaintiff.

W. Nesbitt, K.C., and Frank McCarthy, for defendants.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—Section 237, sub-sec. 4, of the Dominion Railway Act, 1903, provides that if an animal at large upon the highway . . . gets upon the property of the railway company and is killed . . . the owner may recover the amount of his loss from the company—unless it be proved that the animal got at large through the negligence, &c., of the owner. The earlier sub-sections are restricted to cases where an animal at large upon the highway is killed or injured at the point of intersection of the highway with a level railway crossing—where recovery cannot be had if the animal is at large contrary to the provisions of the section. But